SUPREME COURT, U. S.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1973

No. 73-1813

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL NO. 10,
Petitioner,

vs.

ROY O. HOFFMAN, Director, Region 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

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3. Order ..... Attached

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The petitioner, International Longshoremen's and Warehousemen's Union, Local No. 10, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on January 25, 1974.

OPINIONS BELOW

The opinion of the Court of Appeals, reported at 492 F.2d 929, appears in the Appendix hereto. No opinion was rendered by the District Court for the Northern District of California.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on January 25, 1974, and was amended on March 7, 1974. A timely petition for rehearing, together with a suggestion that the case be reheard *en banc,* was denied on March 26, 1974 and this petition for certiorari is being filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 USC 1254(1).

QUESTIONS PRESENTED

1. May a labor organization be held in civil contempt upon a mere "preponderance of the evidence"; is not the more stringent standard of "clear and convincing evidence" required?

2. May a labor organization be held in civil contempt where the record fails to show that it or its officers or agents had "actual notice" of the "specific terms" of the injunction? (Fed. Rules Civ. Pro., Rule 65[d]).

RULES INVOLVED

The case involves the non-statutory rule that a party may not be held in civil contempt unless the evidence is "clear and convincing" and that a mere "preponderance of the evidence" is not sufficient.

It also involves Rule 65(d) of the Federal Rules of Civil Procedure which provides:

> *Form and Scope of Injunction or Restraining Order.*
>
> Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

STATEMENT OF THE CASE

The case arose out of a labor dispute between San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO (hereinafter Typographers) and California Newspapers, Inc., d/b/a the Independent Journal (hereinafter Journal), an employer engaged in publishing a newspaper in Marin County, California. During the course of that dispute, Typographers picketed, at a dock in San Francisco, newsprint which was destined for Journal's printing plant.

On the basis of charges filed by Journal with the National Labor Relations Board (hereinafter the Board) against Typographers and against Teamster Locals 85 and 287, which were respecting the picket line or somehow otherwise involved in the picketing, the Regional Director of the Board's Twentieth Region (hereinafter the Director) invoked the jurisdiction of the district court, pursuant to Section 10(1) of the National Labor Relations Act, as amended (29 USC 160[1]) and procured, on February 11, 1970, an *ex parte* order enjoining Typographers from picketing cargo or shipments of newsprint or other supplies awaiting delivery to Journal at or in the vicinity of Pier 45A at the Port of San Francisco. On February 13[1] the district court issued a temporary injunction identical, in substantive terms, to the *ex parte* order.

The injunction was based upon a finding that the Director had reasonable cause to believe that Typographers and Locals 85 and 287 were engaged in a scheme "to boycott newsprint cargo at the Port of San Francisco destined for Journal and to prevent the delivery of such supplies to Journal by means of picketing, instructions and appeals to . . . employees at the Port of San Francisco not to receive, load, transport, deliver, handle or work on any such cargo". (R. 434).[2]

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[1]All dates are in 1970 unless otherwise specified.

[2]"R" references are to pages of the Clerk's Record, comprising volumes 1 through 6 of the record on appeal. "Tr." references are to pages of the Reporter's Transcript, comprising volumes 7 through 28 of the record on appeal. "Exh" references are to the exhibits introduced in the district court.

The court of appeals described the situation as one involving "picketing and inducing employees of various neutral employers at the Port of San Francisco to interfere with and prevent delivery of newsprint to the Journal" (492 F.2d at 931) and it described the February orders as "enjoining further picketing at the pier and further acts designed to cause the neutral employers to refuse delivery of newsprint." (*Ibid* at 931-932).

Although petitioner was not a party to the Board proceeding or to the district court action, a copy of the *ex parte* order, which expired by its own terms at 5 p.m. on February 13, was served earlier that day on one of petitioner's office employees. The temporary injunction was never served on petitioner. So far as the record reveals, these February orders had their desired effect: no picketing of Journal's newsprint or other supplies at the San Francisco docks occurred thereafter.

No further proceedings took place until April when the Director filed a second petition in the district court. This petition did not charge a contempt of the February orders; rather it alleged that Typographers were now picketing in Marin County "at the entrances to various retail stores . . . to induce the public not to patronize the stores because they were advertising in the Journal" (492 F.2d at 932) and prayed for an injunction against this conduct. Typographers stipulated that it would not contest the facts charged, waived a hearing and consented to the issuance of the injunction as prayed. This injunction, issued on April

28, prohibited Typographers from picketing the Marin County advertisers.[3] Petitioner was not a party to the proceedings which resulted in the April injunction and, as already noted, it was not a party to the underlying Board proceeding. The April injunction was never served on petitioner until after the occurrence of the events upon which the contempt was founded[4] and there is no evidence that petitioner ever had "actual notice" (Fed. Rules Civ. Proc., Rule 65[d]) of that order.

No further proceedings were had until October 10[5] (eight months after the issuance of the February orders and six months after the issuance of the April order) when the petition in the present case was filed, seeking adjudications in both civil and criminal contempt not only against Typographers, but also against Teamster Local 85, Teamster Local 70 (which so far as the record shows had like petitioner, also not theretofore been involved in any of these proceedings), against certain officers of said organizations, and against petitioner. The October petition alleged that both the February and the April orders

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[3]The Director in his brief to the court of appeals recognized that the "subject" of the April order was "retail store picketing" (p. 43) and that the February orders dealt only with "activity at the Port of San Francisco" (p. 16).

[4]In his brief to the court of appeals the Director acknowledged that the only order timely served upon petitioner was the *ex parte* temporary restraining order of February 13 (pp. 9, 46).

[5]In May, the Board had instituted civil contempt proceedings against Typographers and several of its officers. These proceedings, charging retail store-advertiser picketing in Marin County, were based on alleged violations of the *April* injunction. *National Labor Relations Board v. San Francisco Typographical Union, No. 21*, 465 F.2d 53, 55-56 (9 Cir. 1972).

had been violated. However, it did not allege that there had been any picketing at the dock in San Francisco to prevent the delivery of newsprint or supplies to Journal; it alleged only that there had been picketing early in October of Journal's advertisers in Marin County. This latter was the subject of only the April injunction—of which petitioner had had no notice.

The only evidence introduced on the trial of the contempt charges so far as it related to petitioner concerned picketing of the retail advertisers in Marin County. Petitioner insisted below that Rule 65(d) required a dismissal of the proceedings against it because it had no "actual notice" of the injunction which dealt with that matter. The Director argued, however, that service of the February *ex parte* order put petitioner on notice that it was enjoined until February 13 "and probably thereafter . . . from engaging in secondary boycott activity in furtherance of the Journal strike". He further argued that "reason dictates that . . . [petitioner] was under an obligation to inquire" whether the Court had made any further order.[6]

It is difficult to understand how the service of an order which on its face expired on the day it was served could have put petitioner on notice that it was "probably" enjoined "thereafter". It is more difficult to understand how Rule 65's requirement of "actual notice" can be squared with the suggestion that peti-

[6]The quotations are from the Director's brief to the court of appeals (p. 46).

tioner had an "obligation to inquire" whether a "further" and, as it turned out, a different order had been entered. Finally, it is even still more difficult to understand how the service of an order relating to picketing of newsprint at San Francisco docks in February put petitioner on notice that picketing of retail advertisers in Marin County ten months later was also prohibited.

In the event, the district court did proceed against petitioner as well as against the other respondents in both civil and criminal contempt. The overwhelming bulk of the evidence was introduced during the criminal phase of the trial, and both courts below appear to have directed their attention to problems relating to the criminal aspects of the proceeding. The evidence relating to petitioner, compared to that relating to the other respondents, was quite insignificant.[7]

The district court ultimately found petitioner not guilty of criminal contempt, but found that the allegations of civil contempt against it had been established *"by a preponderance of the evidence"* and imposed upon petitioner compliance fines of $7,500 a day and a compensatory fine of $21,208.15.

The court of appeals affirmed, without considering petitioner's arguments that it had been improperly

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[7]The evidence against petitioner related to the chartering of a bus by petitioner to transport persons to Marin County on October 16 and to picketing by "longshoremen" on that date. Service of the April order was not made on petitioner until October 19—three days after it had allegedly violated that order. Once it had notice of the April order, petitioner, upon the advice of counsel, forthwith discontinued any participation in the activity in Marin County (R. 1280-1281; Tr. 2748-2749).

convicted of the civil contempt (a) because it had no notice of the order dealing with the Marin County retail store-advertising picketing and (b) because the district court had applied an impermissible standard of proof to the evidence in the civil case.

REASONS FOR GRANTING THE WRIT

(1) Irrespective of any other considerations in this case and irrespective of the disposition of any petitions for writs of certiorari which may be filed by any other parties, this petition should be granted in this civil contempt case to resolve the conflict of the decision below with a decision of this Court and with the decisions of other courts of appeals on the question of the proper burden of proof in a civil contempt proceeding.

The district court acquitted petitioner of criminal contempt, since it found that the allegations against petitioner had not been proved "beyond a reasonable doubt" (492 F.2d at 932; R. 1218-1219).[8] In applying that standard to the criminal case, the district court was, of course, correct. However, when it came to weighing the evidence in the civil case, the district court held (R. 1199; Tr. 2639), and the court of appeals affirmed it (492 F.2d at 932), that a "prepon-

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[8]The district court stated that petitioner's acquittal of criminal contempt was based "upon the fact that . . . their [sic] involvement here has not been sufficiently brought home to the Union itself in such a manner as to convince me that whatever they did was done contemptuously." (Tr. 2639).

derance of the evidence" was sufficient to support a finding of civil contempt against petitioner.

This decision not only conflicts with a decision of this Court and with decisions of other courts of appeals, as we show below, but has a profoundly unsettling effect upon the long-established rule that civil contempts must be established by clear and convincing evidence.[9]

The Director, in his brief below, conceded (p. 57) that "the prevailing weight of authority is that civil contempt must be demonstrated by clear and convincing evidence."[10] But he argued that ". . . the

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[9]3 Barron and Holtzoff, *Federal Practice and Procedure* (1971 Pocket Part) 378 (§1439); 3 Wright, *Federal Practice and Procedure*, 162 (§705); Moskovitz, *Contempt of Injunctions, Civil and Criminal*, 43 COLUMBIA L. REV. 780, 818-819 (1943).

[10]The Director understated the case when he spoke of the rule as being supported by "the prevailing weight of authority" (*ibid* 57). The decisions, as we show below, are virtually unanimous. The two cases cited by the Director to the effect that there has been "some disagreement . . . as to the proper standard of proof" (*ibid*) do not establish any "disagreement." (a) *Schauffler v. Local 1291*, 292 F.2d 182 (3 Cir. 1961), *reversed* a civil contempt precisely because the evidence was not "clear and convincing" (292 F.2d at 190). (b) The language in *United States v. Jacobs*, 323 F.Supp. 1299, 1302 (C.D. Calif. 1971) that "only a preponderance of evidence is required" is not only contrary to all of the authority referred to below, but it was manifestly *dicta*, for in that case the court, finding the evidence "unsatisfactory", even under its view of the appropriate standard (at 1302), *acquitted* the defendant of the civil contempt.

Nor does *Cliett v. Hammonds*, 305 F.2d 565, 570 (5 Cir. 1962), cited in *Jacobs*, support the view that there is a "disagreement" on this question. There the court (at 569) found that "there is simply no doubt" that respondent had violated the injunction—which is quite a different thing from saying that the violation was established by only a preponderance of the evidence. In any case the cases considered below demonstrate that the rule in the Fifth Circuit, as in the others, requires that civil contempt be established by clear and convincing evidence.

[district] Court found the elements of both civil and criminal contempt had been established beyond a reasonable doubt" (p. 58) and, therefore, the civil contempt was proved by clear and convincing evidence so that the reference in the court's judgment to a preponderance of the evidence was "immaterial" (*ibid*). The trouble with this argument is that its premise is not supported by the record, at least as to petitioner. As to petitioner, the district court did not find that any elements of either contempt had been proven beyond a reasonable doubt; on the contrary, it entered a "Finding of Not Guilty and Judgment of Acquittal" in the criminal contempt, specifically finding, as to petitioner, that "the allegations of said petition have not been proved beyond a reasonable doubt" (R. 1218-1219). Thus, whatever may be the case as to other parties, the findings in the criminal case cannot serve to validate what the district court did to petitioner in the civil case.

Nor is it correct, as the Director argued in his brief below (p. 58), that the findings in the civil and criminal contempts were "substantially identical in all respects save one; namely that as to [petitioner] the Court found the extent of [its] involvement fell short of demonstrating the wilfulness which is an element of the criminal, but not civil, contempt." The district court never made any such finding. At the only place in the record when the district court stated the basis for its findings relating to petitioner, it did not say that petitioner's "involvement" fell short of demonstrating "wilfulness". Rather, it said, *supra*

n. 8, that petitioner's "involvement has not been sufficiently brought home to the Union itself in such a manner as to convince me that whatever they [sic] did was done contemptuously". (Tr. 2639). This is certainly not a finding (and there is none other in the record) that the contempt case against petitioner had been established by clear and convincing evidence.

The rule requiring that the evidence in civil contempt must be clear and convincing is applicable not only to injunctions obtained by administrative agencies like the Board, but heretofore has been held to govern in the whole panoply of federal contempt proceedings: anti-trust suits, legislative committees, and grand juries, to name just a few. The implications of the contrary rule announced in the decision below are therefore enormous.

The reason for the rule that civil contempt must be established by clear and convincing evidence derives, of course, from the nature of a contempt proceeding and from the awesome power which is reposed in a court once it has found a party in contempt. In this very case the imposition of substantial "compliance fines" and "compensatory fines" indicates the quasi-criminal nature of the civil contempt proceeding and establishes the importance of applying the appropriate standard of proof to the evidence. This is not, after all, a mere civil action for the recovery of damages.[11]

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[11]Since the district court was not "convinced" that whatever petitioner did was done "contemptuously" (*supra*, n. 8), it is difficult to understand how, by applying the proper (or indeed any) standard of proof, any contempt adjudication against petitioner can be allowed to stand.

For these reasons the law is virtually unanimous that a civil contempt may not be established by a mere preponderance of the evidence. It requires that the evidence upon which a civil contempt judgment rests must, at the least, be "clear and convincing". An unbroken line of cases so holds:

This court:

Oriel v. Russell, 278 U.S. 358, 364 (1929):

("The court ought not to issue [a contempt] order . . . merely on a preponderance of the evidence".)

And among the circuits:

2nd:

Stringfellow v. Haines, 309 F.2d 910, 912 (2 Cir. 1962):

(" . . . in civil contempt . . . , 'a bare preponderance of the evidence will not suffice . . . Proof of violation must be clear and convincing . . . '.")

Hart Schaffner & Marx v. Alexander's Dept. Stores, Inc., 341 F.2d 101, 102 (2 Cir. 1965):

("A civil contempt order will not issue unless there is 'clear and convincing' proof of a violation of a court decree; a bare preponderance of the evidence will not suffice.")

3rd:

Fox v. Capital Co., 96 F.2d 684, 686 (3 Cir. 1938):

"The plaintiff has a heavy burden to show a defendant guilty of civil contempt. It must be done by 'clear and convincing evidence'.")

Schauffler v. Local 1291, 292 F.2d 182, 190 (3 Cir. 1961):

("... more than a mere preponderance of the evidence ... It must be done by 'clear and convincing evidence'.")

4th:

National Labor Relations Board v. Standard Trouser Co., 162 F.2d 1012, 1014 (4 Cir. 1947):

("... more than a mere preponderance of the evidence; ... clear and convincing proof is necessary.")

5th:

National Labor Relations Board v. Tupelo Garment Co., 122 F.2d 603, 606 (5 Cir. 1941):

("... clear and convincing evidence ...")

A. H. Robbins Co. v. Fadely, 299 F.2d 557, 559 (5 Cir. 1962):

("... clear and convincing evidence.")

National Labor Relations Board v. Alamo Express, Inc., 395 F.2d 481, 482 (5 Cir. 1968):

("... the Board was required to establish civil contempt by clear and convincing evidence".)

6th:

Telling v. Bellows-Claude Neon Co., 77 F.2d 584, 585 (6 Cir. 1935):

("... before civil contempt may be adjudged and penalties therefor imposed, contemptuous acts must be established by evidence that is clear and convincing.")

7th:

Crane v. Gas Screw Happy Pappy, 367 F.2d 771, 774 (7 Cir. 1966), *cert. denied*, 386 U.S. 959 (1967):

("... clear and convincing evidence".)

National Labor Relations Board v. Nickey Chevrolet Sales, 493 F.2d 103, 106 (7 Cir. 1974):

("... clear and convincing evidence ...")

8th:

City of Campbell v. Arkansas-Missouri Power Co., 65 F.2d 425, 428 (8 Cir. 1933):

("... a degree of certainty that leaves no fair ground of doubt")

Kansas Power & Light Co. v. National Labor Relations Board, 137 F.2d 77, 79 (8 Cir. 1943):

("... something more than a bare preponderance of evidence is necessary ... This Court has stated that a 'degree of certainty' is required which leaves no fair ground of doubt. ... Other courts of appeals have expressed the rule as requiring clear and convincing proof ... Whatever qualifying adjective may be used in the various opinions, they are unanimous that a heavy burden of proof rests upon the party urging contempt ...")

9th:

Hanley v. Pacific Live Stock Co., 234 Fed. 522, 531 (9 Cir. 1916):

("... the trend of all the decisions is that the evidence of contempt must be convincing.")

National Labor Relations Board v. San Francisco Typographical Union, No. 21, 465 F.2d 53, 58 (9 Cir. 1972):

(An affidavit that certain respondents were "'probably' aware of the picketing . . . does not constitute clear and convincing proof that they participated in it".)

Hoffman v. Napa and Solano Counties Building and Construction Trades Council, AFL-CIO, unreported Memorandum Affirming Judgment, 9th Circuit, No. 72-1993, April 9, 1973:

("The evidence . . . is both 'clear and convincing'.")[12]

10th:

Atlas Corporation v. DeVillers, 447 F.2d 799, 803 (10 Cir. 1971), *cert. denied,* 405 U.S. 933 (1972):

(". . . overwhelming evidence . . .")

D.C.:

United States v. International Union, 89 F.Supp. 179, 180 (D.C.D.C., 1950), appeal dismissed, 190 F.2d 865 (D.C. Cir. 1951):

(". . . it is incumbent upon the party seeking the adjudication of [civil] contempt to prove guilt by clear and convincing evidence and not by a mere preponderance of evidence . . .")

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[12]In the instant case, the court below ignored its own decisions in *Hanley, Typographical Union, No. 21* and *Napa and Solano Counties.*

This accounts for every circuit except the First. While research has revealed no First Circuit case directly in point, that circuit, without mentioning the degree of proof required, has held that "the burden of proof in a contempt proceeding is on the petitioner" (*National Labor Relations Board v. Reed & Prince Mfg. Co.*, 130 F.2d 765, 768 [1st Cir. 1942]), citing *National Labor Relations Board v. Tupelo Garment Co., supra,* in which the Fifth Circuit held that "clear and convincing evidence was required.[13]

The court of appeals simply did not discuss this issue, nor did it consider these cases although the issue was raised and the cases were cited by petitioner in its briefs, at oral argument and in the petition for rehearing. The explanation for this must be that, in its concern with the purely criminal aspects of the case and with the issues raised by the other parties (particularly with whether or not they had been improperly denied a jury trial in the criminal contempt proceeding), this contention of petitioner was simply overlooked.[14]

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[13]The First Circuit in *Reed & Prince* also cited two Eighth Circuit cases requiring proof by "competent and material evidence". *National Labor Relations Board v. Rath Packing Co.*, 123 F.2d 684 (8 Cir. 1941) and *National Labor Relations Board v. Little Rock Mfg. Co.*, 123 F.2d 868 (8 Cir. 1941). We have already referred to the later Eighth Circuit case of *Kansas Power & Light Co. v. National Labor Relations Board*, 137 F.2d 77 (8 Cir. 1943), in which that court held ". . . something more than a bare preponderance of evidence is necessary . . ."

[14]Compare *United States v. United Mine Workers of America*, 330 U.S. 258, 299 (1947) where this Court observed that it is "the better practice to try the criminal case alone so as to avoid obscuring the defendant's privileges in any manner . . ." Here the "mingling of the civil and criminal proceedings" resulted in "substantial prejudice (*ibid*) to petitioner, whose independent conten-

If the decision below is permitted to stand, the Ninth Circuit will be alone in ignoring the long-settled rule as to the burden of proof in civil contempt proceedings and in holding that civil contempts may be established by a mere preponderance of the evidence. This conflict between the decision below and the virtually unanimous views of this Court and of the other circuits requires resolution by this Court and is the principal reason for granting this writ.

(2) Petitioner was adjudged in contempt for allegedly violating an order of whose "specific terms" it had no "actual notice". This is contrary to Fed. R. Civ. Pro. Rule 65(d). Although this point was urged below, the court of appeals did not so much as mention this rule nor, so far as appears in the opinion, did it ever even consider the issue. The bulk of the

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tions in the civil action were lost sight of in the larger proceedings. This is seen in the opinion of the court of appeals where "without detailing the evidence" (492 F.2d at 933), that court failed to distinguish between evidence which related to other parties and that which involved only petitioner. Thus the court consistently lumped petitioner with the other parties under the rubric "appellants" or "respondents" (see, e.g., 492 F.2d at 931), although petitioner was not a respondent in the earlier proceedings to which the court was referring. Addressing the question of the sufficiency of the language of the injunctions, the court said (492 F.2d at 933) "[a]ppellants were represented by counsel and no request for clarification was made". But petitioner was not involved in the injunction proceedings and it was not represented therein either by counsel or otherwise. Finally, although other "appellants" may (or may not) have "through their house papers boasted they were going to continue despite the court's injunctions" (492 F.2d at 933), the only "house paper" of petitioner received in evidence (Pet. Ex. 175) contains no such boast nor anything indicating knowledge on the part of petitioner of any of the injunction orders.

This commingling of the two types of contempt and the resultant failure to recognize the separate status of petitioner resulted in the substantial prejudice to petitioner against which this Court warned in *United Mine Workers, supra*. Compare, *Developments in the Law—Injunctions*, 78 HARVARD L. REV. 994, 1087 (1965).

opinion deals with other questions raised by other respondents in the criminal proceedings. Petitioner's contention of lack of adequate notice in the civil case seems to have been lost in the shuffle.

The Director did address this question but his suggestions that the service of the February *ex parte* order put petitioner "on notice" that, although petitioner was not named therein and although the order on its face expired on the day it was served, petitioner was "probably" thereby enjoined "thereafter" and that such service placed upon petitioner an "obligation" to inquire whether a "further order"[15] was made, simply will not hold water.

Rule 65(d) requires "actual notice" of the "specific terms" of an injunction as a pre-condition to a contempt finding.

> ". . . one basic principle built into Rule 65 is that those against whom an injunction is issued should receive fair and precisely drawn notice of what the injunction actually prohibits." *Granny Goose Foods, Inc. v. Brotherhood of Teamsters, etc.*, ... U.S. .....) 94 S.Ct. 1113 at 1126; 39 L.Ed. 2d 435 at 453; 42 L.W. 4331 at 4338 (1974).

See also, *International Longshoremen's Association v. Philadelphia Marine Trade Association*, 389 U.S. 64, 76 (1967); *cf. Yates v. United States*, 316 F.2d 718, 723 (10 Cir. 1963); *United States v. Hall*, 198 F.2d 726, 729 (2 Cir. 1952).

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[15]The only "further order" that is relevant to this proceeding is the one made two months later and which dealt, as we have shown, with an entirely different subject matter.

Even if the service of the February *ex parte* order gave petitioner knowledge of *its* contents, it did not and could not give petitioner notice of the contents of the April order. The one dealt with the picketing of newsprint at a dock in San Francisco; the other with the picketing of retail stores in Marin County.

> ". . . [An injunction] need only be obeyed to the extent it reasonably specifies the conduct to be prohibited . . . This language [of Rule 65(d)] strongly suggests that prohibited conduct will not be implied from such orders; that they are binding only to the extent that they contain sufficient description of the prohibited or mandated acts." *Ford v. Kammerer,* 450 F.2d 279, 280 (3 Cir. 1971).

In *New York Telephone Company v. Communication Workers of America,* 445 F.2d 39 (2 Cir. 1971), a civil contempt conviction was reversed in the following circumstance: In June of 1970 an injunction was issued against a work stoppage in a labor dispute involving a "switchmen's transfer dispute". The controversy between the parties continued and in January of 1971 the union was held in contempt of the June order because of a work stoppage involving the employer's "importation of workers from other areas" (445 F.2d at 43). The court of appeals held that, even if the order might be read to cover the subsequent activity, "several policy considerations counsel us to resolve all ambiguities in favor of the unions" (*ibid.* at 48). The first was Rule 65(d) itself and the decision in *International Longshoremen's Association v. Philadelphia Marine Trade Assn.,* 389 U.S. 64 (1967) where (at p. 76) this Court had cau-

tioned against vague decrees that could transform the contempt power from a "potent weapon" to a "deadly one". Another was Section 9 of the Norris-LaGuardia Act (29 USC §109) providing that every injunction in a case growing out of a labor dispute shall prohibit only "specific act or acts". The court therefore interpreted the injunction as applying only to the specific circumstances out of which it arose—the "controversy involving the transfer of switchmen" (445 F.2d at 51). It refused to apply it, despite the breadth of the language employed,[16] to the later controversy arising out of the "importation of workers from other areas".

The parallel to the instant case is obvious. The only order of which petitioner had "actual notice" (even ignoring that on its face it expired on the day it was served) was the one which prohibited picketing at a dock in San Francisco to prevent the delivery of newsprint to Journal. Yet petitioner was held in contempt for allegedly picketing retail stores in Marin County. To apply an order dealing with dockside picketing in San Francisco to retail store picketing in Marin County is, indeed, to transform the February *ex parte* order from a potent weapon to a deadly one.[17]

In affirming the district court, the court of appeals countenanced a procedure whereby petitioner was held

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[16]The June order had enjoined the defendants "from engaging in, or organizing, inducing or encouraging others to engage in any strike, work stoppage, boycott of overtime work, slowdown or any other form of interference with the business of plaintiff." (445 F.2d at 43).

[17]Compare, *Allee v. Medrano*, ____ U.S. ____, 42 L.W. 4736 at 4738 (May 20, 1974) (an injunction proscribing picketing at one location is not applicable to incidents which occurred at other locations).

in contempt because it guessed wrongly about the intended scope of the only order of which it had notice. No more than such a record could sustain the contempt in *Granny Goose Foods, supra,* where the union was "left to guess" (94 S.Ct. at 1126-1127; 39 L.Ed.2d at 453; 42 L.W. at 4338) about the duration of the order, can it sustain the contempt here.

The departure by the courts below from the salutary principles of Rule 65(d) and the resultant conflict between the decision below and the decisions of this court in *Granny Goose Foods* and *International Longshoremen's Association* and the decisions of the Third Circuit in *Ford v. Kammerer* and the Second Circuit in the *New York Telephone* case is an additional reason why the writ should be granted.

CONCLUSION

For either of the two reasons specified above the writ of certiorari herein sought should be granted.

Dated, San Francisco, California,
May 31, 1974.

Respectfully submitted,
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Attorney for Petitioner.

GLADSTEIN, LEONARD, PATSEY AND ANDERSEN,
Of Counsel.

(Appendix Follows)

Appendix

United States Court of Appeals
for the Ninth Circuit

Roy O. Hoffman, Director, Region 20, NLRB, Plaintiff-Appellee, v. International Longshoremen's & Warehousemen's Union, Local No. 10, Defendant-Appellant.	No. 71-1818 No. 71-1819 No. 71-1820 No. 71-1821
Roy O. Hoffman, Director, Region 20, NLRB, Plaintiff-Appellee, v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, IBTCWHA, & James R. Muniz, Defendants-Appellants.	No. 71-1822 No. 71-1823 No. 71-1827
Roy O. Hoffman, Director, Region 20, NLRB, Plaintiff-Appellee, v. San Francisco Typographical Union Local No. 21, etc., Don Abrams; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, IBTCWHA; & Timothy J. Richardson, Defendants-Appellants.	No. 71-1828 No. 71-1829 No. 71-2073

[January 25, 1974]

Appeals from the United States District Court
for the Northern District of California

Before: MERRILL and TRASK, Circuit Judges, and KELLEHER,* District Judge

TRASK, Circuit Judge:

This is an appeal from two judgments holding appellant unions and union officers guilty of civil contempt and a portion of the appellants guilty of criminal contempt. The contempt actions were based upon alleged violations of two separate injunctions issued by the District Court under section 10(1) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*, hereinafter called the Act. Appeal is taken pursuant to 28 U.S.C. § 1291. We affirm.

California Newspapers, Inc., doing business as San Rafael Independent Journal (Journal), is engaged at San Rafael, California, in publishing a daily newspaper of general circulation in Marin County called *The Independent Journal*. Jurisdictional requirements of the Act with respect to gross revenues and interstate commerce are clearly present.

Since on or about January 7, 1970, a labor dispute had existed between the Journal and San Francisco Typographical Union No. 21 (Local 21), International Typographical Union, AFL-CIO.[1] In that month a

*Honorable Robert J. Kelleher, United States District Judge for the Central District of California, sitting by designation.

[1]In addition to the consolidated appeals from the District Court's orders finding appellants guilty of civil and criminal contempts which are at issue here, the unfair labor practice cases before the NLRB arising out of this controversy proceeded separately to final hearing and decision. San Francisco Typographical Union No. 21, 188 N.L.R.B. No. 108, 76 L.R.R.M. 1627 (1971). Local 21 and certain of its officers were cited for civil contempt in a companion case. The Board petitioned this court for enforcement of its order

strike was called against the newspaper and picketing began to the Journal's San Rafael publishing plant.

On February 11, 1970, the Regional Director of the National Labor Relations Board (the Board) filed with the District Court a petition for a temporary injunction pursuant to section 10(1) of the Act, against Local 21, Teamsters Local 85 and Teamsters Local 287. The petition was predicated upon a charge filed by the Journal that the named respondents were violating section 8(b)(4)(B) of the Act by engaging in secondary boycotts. Particularly they were picketing and inducing employees of various neutral employers at the Port of San Francisco to interfere with and prevent the delivery of newsprint to the Journal. After a hearing on February 13, 1970, at which the respondents presented no evidence, a temporary injunction was issued against all respondents enjoining further picketing at the pier and further acts designed to cause the neutral employers to refuse delivery of newsprint. On February 13, 1970, a Deputy United States Marshal served a copy of a Temporary Restraining Order identical with the Temporary Injunction on Longshoreman's Union, Local 10 which represented longshore employees at the Port of San Francisco. The injunction was based upon a finding that all three locals had engaged in a joint secondary boycott plan.

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and Local 21 appealed the civil contempt citation. Those two appeals were consolidated, argued and decided by this court in NLRB v. San Francisco Typographical Union No. 21, 465 F.2d 53 (9th Cir. 1972).

On April 28, 1970, the Board filed a second petition charging that Local 21 was conducting illegal secondary boycott activities at entrances to various retail stores in the vicinity to induce the public not to patronize the stores because they were advertising in the Journal. Local 21 stipulated that it would not contest the facts charged, waived a hearing and consented to the issuance of an injunction forthwith as prayed for. The court considered the petition and issued the injunction on April 28, 1970.

Both the February 13 injunction and that of April 28 were directed to the named respondents and "their officers, representatives, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them or any of them."

Notwithstanding the April 28 injunction Local 21 continued to picket the retail stores in substantially the same way. On May 28, 1970 after hearing, the court found Local 21 and certain of its officers and agents including its vice-president DeMartini and organizer Abrams in civil contempt and directed that they purge themselves, inter alia, by fully complying with the injunction order. The court retained jurisdiction for the purpose of imposing a compensatory fine and considering a compliance fine.

Despite the civil contempt order, the tempo of illegal activities in violation of both injunctions increased, with other locals participating. These included Longshoremen's Local No. 10; Teamsters No.

70 and James R. Muniz, its president; and Teamsters No. 85 and Timothy Richardson, its business manager. The effort broadened to boycott or quarantine San Rafael and all of Marin County, curtailing deliveries of all supplies, causing traffic tie-ups and attempting to prevent delivery trucks from entering exit ramps from main highways to enter the city.

On October 10, 1970, the petition in the present case was filed seeking adjudication in civil and criminal contempt for violations of both the February 13 injunction and that of April 28. At the outset of the hearing in the District Court the criminal and the civil cases were severed with the criminal to be tried first. A request for a jury trial in the criminal case was denied. On December 24, 1970, at the close of the hearing the District Court determined that the allegations of the petition had been proved beyond a reasonable doubt with respect to union appellants Local 21, Teamsters Local 70 and Teamsters Local 85, and individual appellants Abrams, Muniz and Richardson, and that those appellants were guilty of criminal contempt. The court also found that the allegations of civil contempt had been established by a preponderance of the evidence as to all of those guilty of criminal contempt, plus Longshoremen's Local 10 and individual appellant DeMartini. The order of December 24 with respect to the civil action contains certain standard purgation requirements in the way of notices, and imposes a compliance fine of $7,500 a day against the unions and $100 per day against individual appellants for each day such individual fails

to comply with the order. Finally, it retains jurisdiction for the purpose of imposing a compensatory fine.

In the criminal case a fine was levied against each of the three unions in the sum of $25,000 with a provision for remission of $15,000 of each fine if the court is satisfied at the end of one year with the appellants' compliance with the court's orders. Sentence of individual defendants was suspended and each was put on probation for one year. If probation was violated, each would subject himself to the power of the court to impose a sentence of imprisonment up to, but not exceeding, six months. A compensatory fine was later imposed in the sum of $21,208.15 in the civil proceeding.

Appellants raise a number of questions directed at the sufficiency and admissibility of evidence adduced during the proceeding, the inadequacy of the language of the temporary injunctions to put appellants upon notice of the activities within the scope of the injunctions, and the technical deficiency of certain of the pleadings. We have examined each in view of the importance of the proceeding and find that each is without substantial merit. Without detailing the evidence, which was voluminous, it clearly justified and supported the court's findings as to both criminal and civil contempts. The language of the injunctions was abundantly sufficient. Appellants were represented by counsel and no request for clarification was made. On the contrary appellants through their house papers boasted they were going to continue despite the court's injunctions. The same ap-

plies to the argument of the lack of precision of the allegations of the petition for an adjudication of criminal contempt. Appellants and their attorneys were fully apprised of the charges; they deliberately chose to risk not to obey them.

Where the purposes of issuing the citation for contempt is remedial in scope in order to enforce compliance with the court's order, the contempt is civil. *Shillitani v. United States,* 384 U.S. 364, 368-70 (1966). In such cases a jury trial is not required. *Shillitani, supra; Cheff v. Schnackenberg,* 384 U.S. 373, 377 (1966). No request for a jury trial was made in the civil contempt cases here. Where a fine is imposed or the purpose is punishment, the contempt is criminal. *Penfield Co. of California v. SEC,* 330 U.S. 585, 590-91 (1947); *Nye v. United States,* 313 U.S. 33 (1941). It is from the criminal contempt proceedings which imposed fines and probation that complaint is made of the denial of a jury trial.

The court has jurisdiction to grant injunctive relief or temporary restraining orders in order to protect the public welfare or preserve the status quo pending a hearing or to enforce its orders. We pointed out in *San Francisco-Oakland Newspaper Guild v. Kennedy,* 412 F.2d 541, 544, 545n.3 (9th Cir. 1969):

> "All that is required under Sec. 10(1) for a regional director to petition for such an injunction is reasonable cause to believe an unfair labor practice is being committed. The preliminary injunction should be granted by the court if the court finds that the factual allegations and the propositions of law underlying the regional di-

> rector's petition are not insubstantial and frivolous so that he has reasonable cause for believing the Act has been violated, and if the court finds that injunctive relief is appropriate. On appeal, review is limited to a determination of whether the district court's findings are clearly erroneous.
>
> . . . .
>
> "Neither the district court nor this court is called upon to decide whether in fact a violation of the Act has been committed; the ultimate determination with respect to this question is reserved exclusively for the Board, subject to review by the courts of appeals pursuant to Sec. 10(e) and (f) of the Act . . . ."

The court must also have the power to enforce its orders if the Act is to be effective. *Madden v. Grain Elevator, Flour & Feed Mill Workers,* 334 F.2d 1014 (7th Cir. 1964), *cert. denied,* 379 U.S. 967 (1965); *Evans v. Typographical Union,* 81 F.Supp. 675 (S.D. Ind. 1948).

Here the District Court, acting upon the petition of the Board, did grant injunctive relief under Section 10(1) of the Act, 29 U.S.C. § 160(1).[2] When that injunctive relief was disregarded civil sanctions were imposed and when the court's orders were willfully flaunted and disobeyed criminal penalties followed.

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[2] "Whenever it is charged that any person has engaged in an unfair labor practice . . . the officer or regional attorney . . . shall . . . petition any United States district court . . . for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law . . . ." 29 U.S.C. § 160(1).

In support of their contention that they were erroneously denied a jury trial, appellants rely upon 18 U.S.C. § 3692, which reads as follows:

> "In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed."

Appellants acknowledge that the language represents a codification of the Norris-LaGuardia Act, in which the language granting contempt powers was originally limited to "all cases arising under this [Norris-LaGuardia] Act." Sec. 11, 29 U.S.C. § 111. *See United States v. United Mine Workers,* 330 U.S. 258, 298 (1947). It is argued that a revision of 1948 (Act of June 25, 1948, ch. 645, 62 Stat. 701-02, 844), which provided that the contempt power extended to "all cases . . . arising under the laws of the United States . . .", necessarily is all inclusive and thus envelops within its scope the present NLRA controversy. Thus, the argument concludes, a jury is required if requested.

The thesis of appellants is too broad. Section 3692 does not stop when it refers to "all cases of contempt arising under the laws of the United States . . . ." It limits the definition by adding after the words "laws of the United States," the words "governing the issuance of injunctions or restraining or-

ders in any case involving or growing out of a labor dispute." The purposes of the Norris-LaGuardia Act to limit and restrict the equitable powers of the courts to intervene in labor disputes between private employers and unions are not the same as the powers involved in the administrative scheme of the Labor Management Relations Act and its amendments. There is no reason to believe that Congress intended its grant of equitable powers to district courts as embodied in section 10(1) of the Act, 29 U.S.C. § 160(1), to be repealed by the recodification of section 11 of the Norris-LaGuardia Act, 29 U.S.C. § 111, into 18 U.S.C. § 3692. *Brotherhood of Local Firemen & Enginemen v. Bangor & Aroostock R.R. Co.*, 380 F.2d 570, 580 (D.C. Cir), *cert. denied*, 389 U.S. 327 (1967); *Madden v. Grain Elevator, Flour & Feed Workers*, 334 F.2d 1014, 1020 (7th Cir. 1964). *See Schauffler v. United Association of Journeymen*, 230 F.2d 572 (3d Cir.), *cert. denied*, 352 U.S. 825 (1956); *NLRB v. Red Arrow Freight Lines*, 193 F.2d 979 (5th Cir. 1952).

Although the authorities cited pertain principally to civil contempts we hold to the view that the jurisdiction of the district courts to enforce their orders made under section 10(1) of the Act applies as well to criminal contempts, and that a jury trial is not compelled by virtue of the provisions of 18 U.S.C. § 3692.

Having thus concluded, it remains necessary to consider appellants' contention that the court erred in not summoning a jury upon request because of the

seriousness of the violations charged and the resulting weight of the penalties imposed. The trial court imposed two penalties in the criminal proceeding. As to the individuals it found guilty of criminal contempt, it suspended sentence and placed them on probation for one year, determining that if the condition of probation was broken they would subject themselves to the power of the court to impose a sentence of imprisonment of "up to but not exceeding, six months." It appears well established that jury trials are not constitutionally required in those cases where the penalty does not exceed six months' imprisonment. *Bloom v. Illinois,* 391 U.S. 194 (1968); *Cheff v. Schnackenberg,* 384 U.S. 373 (1966); *United States v. Barnett,* 376 U.S. 681 (1964); *Green v. United States,* 356 U.S. 165 (1958). *See also Duncan v. Louisiana,* 391 U.S. 145 (1968).

Cheff, supra, was an instance of criminal contempt of an order of the Court of Appeals of the Seventh Circuit arising out of proceedings before the Federal Trade Commission. Cheff was found guilty and sentenced to six months' imprisonment. His petition for certiorari was granted with review limited to the question whether after a denial of a demand for a jury, a sentence of imprisonment of six months was constitutionally permissible under Article III and the Sixth Amendment.[3] The Court held that it was.

[3] "The Trial of all Crimes, except in Cases of Impeachment, shall be by jury . . . ." U.S. Const., art. III, § 2.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ." *Id.,* amend. VI.

It stated that it was "constrained to view the proceedings" as "equivalent to a procedure to prosecute a petty offense" which under its decisions did not require a jury trial.[4] Clearly, then, it appears that sentences of imprisonment for a term of six months or less are neither constitutionally impermissible nor proscribed by the Supreme Court under its supervisory power over the inferior federal courts. We therefore hold that the criminal penalties meted out to the individual here in the form of suspended sentences and probation are not constitutionally invalid.

As to the appellant unions (Local 21, Local 85 and Local 70), each had imposed upon it a fine of $25,000. Payment of $15,000 of that sum was suspended for one year and was then to be remitted to the union upon a determination by the court that the union had not engaged in any further violations of injunction orders. The unions contend here that the amount of the fines establish them as other than "petty" in nature and therefore the denial of their requests for a jury trial was erroneous. The basis of this ar-

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[4]The Court referred to a portion of 18 U.S.C. § 1 (1964 ed.), "[a]ny misdemeanor, the penalty for which does not exceed imprisonment for a period of six months is a 'petty offense.'" 384 U.S. at 379.

It also concluded its opinion by an expression of its point of view in recognition of its responsibility for "effective administration" of the federal courts, stating:

> "Therefore, in the exercise of the Court's supervisory power and under the peculiar power of the federal courts to revise sentences in contempt cases, we rule further that sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof." *Id.* at 380.

gument is that the full text of 18 U.S.C. § 1(3) provides:

> "Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense."

Since the Court in *Cheff* relied upon this statute for its characterization of a six months' maximum imprisonment as being "petty," appellants argue that the statute must necessarily determine the $500 fine as being the maximum fine which could permissibly be characterized as "petty" and thus imposed without a jury trial or a waiver of jury. Although there is a syllogistic allure in the argument, decisions subsequent to *Cheff* cast doubts upon the contention's validity. *Bloom v. Illinois, supra,* involved a conviction in an Illinois state court for criminal contempt and a sentence to imprisonment of 24 months as the penalty. The defendant's timely demand for a jury trial had been refused, and his conviction affirmed. Certiorari having been granted, 386 U.S. 1003 (1967), the Court reexamined the limitations of the rule that criminal contempts could be tried without a jury. *Duncan v. Louisiana, supra,* decided the same day as *Bloom,* had held that the right to a jury trial extended to the states.

In *Bloom,* the Court recounted that in *Green v. United States, supra,* it had held to be constitutionally permissible summary trials without a jury in all contempt cases, based upon common law rules and upon the concept that such power in the courts was consid-

ered essential to the proper and effective administration of justice. It then pointed out that *Barnett, supra,* had signalled a possible change of view in the event of a severe punishment in a criminal contempt case. Two years later, in 1966, *Cheff, supra,* held that six months' imprisonment was a petty and not a severe punishment and did not require a jury. The Court in Bloom stated that it "accept[s] the judgment of *Barnett* and *Cheff* that criminal contempt is a petty offense unless the punishment makes it a serious one."[5] 391 U.S. at 198. As to when the offense ceases to be "petty" and becomes "serious" the Court concluded:

> "In *Duncan* we have said that we need not settle 'the exact location of the line between petty offenses and serious crimes' but that 'a crime punishable by two years in prison is . . . a serious crime and not a petty offense.'" *Id.* at 211.

In this plethora of discussion establishing and reexamining rules as to when a jury trial is required, there is hardly a word spoken about the line at which the measure in dollars of a fine causes the contempt to cease being "petty" and to become "serious." Certainly we cannot understand *Cheff* as holding that the sum of $500 constitutes that line simply because it uses 18 U.S.C. § 1(3) to express a point of division between permissible and impermissible terms of im-

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[5]The opinion in *Bloom* does not comment on the statement in *Cheff* that "sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof." 384 U.S. at 380. The implication is that such sentences are considered serious.

prisonment at which a jury is required.[6] A deprivation of his liberty for a period of more than six months could certainly be serious to any individual, whereas a fine of $500 to a large corporation or to a large union might have no deterrent or punitive effect at all.[7]

A distillate of the holdings of the more modern decisions of the Supreme Court on the question of the right to trial by jury in a criminal proceeding leads us to believe that if there is an existing statute which authorizes the imposition of a penalty of more than six months imprisonment, the penalty is not a "petty" one but a "serious" one and a jury or waiver thereof is required. *Duncan v. Louisiana, supra.* If the criminal proceeding is in contempt with no statutory penalty but an open-ended penalty resting on the court's discretion, a hindsight determination is made upon review to determine whether the offense was "petty" or "serious" based upon the severity of the punishment. If the penalty imposed is six months imprisonment or less, then the offense was a "petty" one and

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[6] In *Duncan*, the Court pointed out that because there was no statute involved in *Cheff* defining the penalty for criminal contempt in terms of months or years of imprisonment, the Court was forced to look at the penalty actually imposed as the best evidence of the seriousness of the offense. 391 U.S. at 162 n. 35.

[7] It is interesting to note that in *Cheff*, his codefendant Holland Furnace Co. was fined $100,000. Both Cheff and the corporation petitioned for certiorari. The petition of Cheff was granted and in the opinion the question of petty versus non-petty measured by length of imprisonment was discussed at length. The petition for certiorari of the corporation was denied and the Court in *Cheff* did not discuss a measure of dollars which might define a fine as being petty or serious.

no jury was required. *Cheff v. Schnackenberg, supra; Duncan v. Louisiana,* 391 U.S. 145, 162 n.35.

Where the contemnor is a corporation, association, union or other artificial person and a fine is the ordinary punishment, the rules become obscure. The Court has never said that while a $500 fine marks the contempt as being "petty" under 18 U.S.C. § 1(3) with no jury required, a fine of $501 labels it as "serious" with the necessary consequence that a jury must have been enpaneled.[8] A fine which might under all of the circumstances constitute only a slap on the wrist of one artificial entity might be a "serious" penalty to another.[9] Accordingly, we can go no further than to decide this case, and upon that basis we do not find that the judgment of the District Court was constitutionally prohibited.

The judgment is therefore affirmed.

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[8]We note *United States v. R. L. Polk & Co.,* 438 F.2d 377 (6th Cir. 1971), to the contrary but are not persuaded by it.

[9]The six month-$500 provision of 18 U.S.C. § 1(3) defining the limits of "petty" offenses became law in 1930. Act of Dec. 16, 1930, ch. 15, 46 Stat. 1029. While the value of personal freedom has not depreciated in the intervening period the same cannot be said either of the value of the dollar or of the growth in dollars of the assets of large organizations.

United States Court of Appeals
for the Ninth Circuit

Roy O. Hoffman, Director, Region 20, NRLB, Plaintiff-Appellee, v. International Longshoremen's & Warehousemen's Union, Local No. 10, Defendant-Appellant.	No. 71-1818 No. 71-1819 No. 71-1820 No. 71-1821
Roy O. Hoffman, Director, Region 20, NRLB, Plaintiff-Appellee, v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, IBTCWHA, & James R. Muniz, Defendants-Appellants.	No. 71-1822 No. 71-1823 No. 71-1827 DC 70-895 WTS

[Mar. 26, 1974]

Before: MERRILL and TRASK, Circuit Judges, and KELLEHER,* District Judge

ORDER

The panel as constituted in the above case has voted to deny the petitions for rehearing and to reject the suggestions for rehearing en banc.

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*Honorable Robert J. Kelleher, United States District Judge for the Central District of California, sitting by designation.

The full court has been advised of the suggestions for en banc hearings, and no judge of the court has requested a vote on the suggestions for rehearing en banc. Fed. R. App. P. 35(b).

The petitions for rehearing are denied and the suggestions for rehearing en banc are rejected.

In the

Supreme Court of the United States

OCTOBER TERM, 1973

AUG 28 1974
MICHAEL RODAK, JR., CLERK

No. 73-1813

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL NO. 10,
Petitioner,

vs.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

vs.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief for Respondent, California Newspapers, Inc., d/b/a San Rafael Independent Journal, in Opposition

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1813

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL NO. 10,

Petitioner,

VS.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,

Petitioners,

VS.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief for Respondent, California Newspapers, Inc., d/b/a San Rafael Independent Journal, in Opposition

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 492 F.2d 929. Contrary to the statements in the petitions, the District Court did render an opinion in the form of detailed findings of fact and conclusions of law. The District Court on December 24, 1970, entered an order and adjudication, adjudging Petitioners, among others, in civil contempt and an order and adjudication on the same date adjudging Petitioners in No. 73-1924, among others, in criminal contempt as well (R. 1194-1205).

On January 21, 1971, the District Court entered its findings of fact and conclusions of law in the criminal contempt proceeding as supplementary to and *in extenso* of its December 24, 1970, order and adjudication in that proceeding (R. 1249-1262).

On January 28, 1971, the District Court having reopened the civil contempt proceeding to allow Petitioner in No. 73-1813 to introduce additional evidence on its behalf, reaffirmed its order and adjudication in civil contempt as to all contemnors and entered its findings of fact and conclusions of law (R. 1308-1321).

JURISDICTION

The jurisdictional requisites are set forth in the petitions.

QUESTIONS PRESENTED

We adopt the questions as set forth in the brief in opposition by Respondent Hoffman.

ARGUMENT

While we join in the argument set forth in the brief in opposition by Respondent Hoffman, we here discuss some of the issues as we see them.

Based upon the record and the law, we submit there is no issue presented which raises either a constitutional question or a conflict between circuits. Neither is an issue of first impression of an important question of federal law involved which requires decision by this Court.

I. The Evidence Demonstrating the Participation of Petitioner Local 10.

This Petitioner asserts that the evidence relating to it was "quite insignificant." On the contrary, the evidence was such as to warrant the finding by the District Court of this Petitioner's active participation in the violations of the injunctions. The evidence showed that the Petitioners in both cases actively participated with other labor organizations which were contemnors, in a plan to shut down and starve out an entire county; to deny the denizens of that county the daily necessaries of life by preventing trucks delivering food, food products and other necessaries from coming into the county; and by picketing trucks making deliveries and places of business within the county, by violence, destruction of property, threats and intimidation.[1] All of such activity was contrary to the injunctions issued pursuant to Section 10(1) of the Labor Management Relations Act, 1947, as amended.[2]

The Petitioners were acting in furtherance of the Labor dispute between the San Francisco Typographical Union Local No. 21 ("Local 21") and the California Newspapers,

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1. That the plan was to shut down all of Marin County by exerting economic pressure against it, to in turn exert pressure on the Independent Journal is established in "The President Reports," column of the October 1970 edition of the "Typographical Bulletin," the official journal of Local 21 (Tr. 2303-2304; Pet. Exh. 220).

2. The injunctions were couched in the statutory language of the secondary boycott provisions of Section 8(b)(4)(B) of the Act [29 U.S.C. § 158(4)(B)].

Inc. d/b/a San Rafael Independent Journal ("Independent Journal") to boycott the county of Marin in which the Independent Journal was published.

The testimony of George Johns, secretary-treasurer of the San Francisco Labor Council revealed that for a period of months in 1970, representatives of the unions involved, *including Local 10,* regularly met at the offices of the Council to discuss their support of the strike by Local 21 against the Independent Journal (Tr. 1886-1890, 1899-1900).

Local 10 actively participated in and jointly sponsored with the other contemnors, a mass march and rally in San Rafael on July 25, 1970, in support of the strike against the Independent Journal. It furnished marchers with transportation by chartering a bus. It furnished free lunches to the marchers and offered "guaranteed . . . work opportunities for those taking part." It also periodically made financial contributions to funds to assist the strike and picketing activities. On September 2, 1970, about a month before the activities in violation of the injunction, Local 10 made an authorized contribution in "support of the coming action by the Labor Support Committee in regards to the strike" (Tr. 2023, 2234-2238; Pet. Exhs. 166, 169, 182).

Local 10 urged its members to "spread the word of boycotting the scabby Independent-Journal and all their advertisers" (Tr. 2245-2246; Pet. Exh. 174). In October 1970, in its official publication, "Longshoremen's Bulletin," after referring to the Independent Journal strike and stating "we must stand behind the strikers," Local 10 went on to state:

> "The AFL-CIO, *ILWU,* Teamsters, United Farmworkers and [sic] Unions are making a *joint effort* to set up formal picket lines outside of Companies that advertise in the Independent Journal. *Any longshoreman who is willing to help can report to the Marin Labor Temple* . . . Remember the next union on strike

may be your own. *Note: a bus is being arranged to transfer all men wishing to go starting Friday, October 16. The bus will leave about 7:00 AM from the dispatch hall. How about giving a hand!!* (Emphasis added)

On October 16, 1970, one of the days during which the injunctions were violated, Local 10 chartered a bus to transport pickets to San Rafael (Tr. 2022, 2250; Pet. Exhs. 180, 181). That day the pickets in San Rafael carried signs with legends reading "Longshoremen" and "Seamen." Some of the signs read "This Longshoreman Supports I.J. Strike." These pickets engaged in picketing at both customer and delivery entrances of various stores and in shopping centers (R. 545, 563-564, 588; Pet. Exhs. 58, 64, 73-82, 143-145).

Among these pickets carrying a "Longshoreman" sign, was a picket who wore a button identifying him as a steward of Local 10 (R. 545, Tr. 1126, 1129-1130). Two pickets who were served by a deputy United States Marshal with copies of both injunctions while they were on a picket line at one of the stores which advertised in the Independent Journal, identified themselves as Local 10 members and exhibited their union cards (Tr. 985, 995-997, 1025, R. 716).

On October 16, 1970, during the period involved, in a strike report to the membership of Local 21, Abrams the organizer of that union, praised "the ILWU, whose leadership and participation have been absolutely outstanding" (Tr. 2064).

There was other evidence of the close cooperation in the October 1970 events between Local 10 and the other contemnors. Petitioner Muniz, president of Local 70, according to the records of that union, incurred expenses on behalf of Local 10, among others, in connection with the illegal October 1970 activities (Tr. 2026-2028, 2254-2257; Pet. Exhs. 187A-C, 188).

II. The Evidence with Respect to the Participation of Local 70.

As we read the petition of Muniz and Local 70, they admit having engaged in violations of the Act in October 1970, but in an argument worthy of a semanticist, they urge that what they did on that occasion was not prohibited by the injunctions. In view of their admitted participation, we shall forego reciting the facts as to their role in the plan to shut down Marin County.

III. Petitioners Had Notice of the Injunctions.

The law is well settled that in a civil or criminal contempt proceeding, knowledge of the injunction involved, may be established by circumstantial evidence. *Walker v. City of Birmingham*, 388 U.S. 307, 312, n. 4 (1967). In the absence of "direct evidence of knowledge," the trier of fact "may find knowledge from circumstantial evidence . . . if the circumstances are such as to support a reasonable inference." *N.L.R.B. v. Radcliffe*, 211 F.2d 309, 315 (C.A. 9, 1954), cert. den. 348 U.S. 833, 75 S.Ct. 56.

The District Court found that knowledge of the injunctions by Local 70 and Muniz, its president, could be inferred "beyond a reasonable doubt" from the close collaboration between Muniz and the president of Teamsters Local 85, which collaboration was constantly evidenced throughout the entire secondary boycott plan and campaign.[3] As the District Judge stated when sentencing the contemnors, "it would be ridiculous to hold that Mr. Muniz, who was president of Local 70 and over there on the ground taking an active part in it in connection with people from the other

3. One of the injunctions ran against Teamsters Local 85. Neither that Local, its president Richardson, nor San Francisco Typographical Union Local No. 21 and its involved officers all of whom were also found in contempt, have petitioned this Court for a writ of certiorari.

labor unions, didn't know about this order affecting one of its kindred teamster unions" (Tr. 2728).[4]

There was additional evidence which lends credible support to the District Court's finding of knowledge. There was Local 21's widespread and repeated publicity given to the injunctions. There was close cooperation between Local 21 and other unions, including the Petitioners, as we have pointed out, *supra*.

IV. The Evidence Supports the Finding of Civil Contempt Against Local 10.

Local 10 argues that the District Court did not apply the proper quantum of evidence standard in finding it in civil contempt.

The instant case was begun and tried on the basis of the evidence in the criminal contempt case. The District Judge found all of the unions except Local 10, were beyond a reasonable doubt guilty of criminal contempt. Using the same evidence and such additional evidence as the defense adduced, he found all of the unions in civil contempt. Thus, whether "a preponderance of the evidence," as some courts have held or "clear and convincing" evidence as some other courts have held, is the standard, here the evidence which measured up to beyond a reasonable doubt to find all but Local 10 in criminal contempt, was the basis for finding Local 10 in civil contempt. Surely, such evidence is more

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4. In their petition (p. 17), Muniz and Local 70, state: "Local 21's dispute with the Independent-Journal cut a broad path. Locals 85, 287 *and possibly 10* were the subject of the first injunctive decree." [emphasis supplied] At least to Muniz and Local 70, there was notice and knowledge of one of the injunctions on the part of Local 10.

than "clear and convincing," if that is the standard as urged by Local 10.[5]

As was said in *Cliett v. Hammonds,* 305 F.2d 565 (C.A. 5, 1962), where the Court reversed the criminal contempt proceeding because of non-compliance with F. R. Crim. P. 42(b), the evidence in that aspect of the case being used for a finding of civil contempt (at 571): "As a finding of civil contempt, the judgment . . . is fully supported."

In *Oriel v. Russell,* 278 U.S. 358, 49 S.Ct. 173 (1929) cited by Local 10, the Court treated of the proof required in "civil fraud" in a bankruptcy proceeding in which the bankrupts were found in civil contempt for disobeying court orders. The judgment was affirmed. In that part of this Court's opinion from which Local 10 quotes partially and out of context, this Court stated (278 U.S. 364):

> "With reference to the character or degree of proof in establishing a civil fraud, the authorities are quite clear that it need not be beyond reasonable doubt, because it is a civil proceeding . . . The Court ought not to issue an order lightly or merely on a preponderance of the evidence, but only after full deliberation and satisfactory evidence, with the understanding that it is rendering a judgment which is only to be set aside on appeal or some other form of review, or upon a properly supported petition for rehearing in the same court."

In the instant case there is "full deliberation" and more than "satisfactory evidence."

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5. As was pointed out in *Schauffler v. Local 1291, Internat'l Longshoremen's Assn.,* 292 F.2d 182 (C.A. 3, 1961), a case cited by Local 10, some courts have held that the petitioner in a civil contempt proceeding must prove a violation of the court's order by "more than a mere preponderance of the evidence," some have held it must be "a clear preponderance of the evidence," and others have indicated that "a degree of certainty is required which leaves no fair ground of doubt." Whatever the test, it is more than met in the instant case.

This Court in *Oriel v. Russell, supra,* went on to hold (278 U.S. 366-367):

> "In the two cases before us, the contemnors had ample opportunity in the original hearing to be heard as to the fact of concealment, and in the motion for the contempt to show their inability to comply with the turnover order. They did not succeed in meeting the burden which was necessarily theirs in each case, and we think, therefore, that the orders of the Circuit Court of Appeals in affirming the judgments of the District Court were the proper ones."

There remains a comment on one other case cited by Local 10. *City of Campbell Mo. v. Arkansas-Missouri Power Co.,* 65 F.2d 425 (C.A. 8, 1933) from which Local 10 purports to quote from page 428, we are unable to find any such statement by the Court. Local 10 has apparently taken separate phrases out of context from two separate paragraphs and tacked them together to make it appear as if they read as appears in the quote. The language of the Court at 428 is as follows:

> "When it is doubtful whether a decree of injunction has been violated, a court is not justified in punishing for contempt, either criminal or civil, for the reason that no one can say with any degree of certainty that the authority of the court needs vindication or that the aggrieved party is entitled to remedial punishment.[6]
>
> "'Process of contempt is a severe remedy, and should not be resorted to where there is fair ground of doubt as the wrongfulness of the defendant's conduct'."

To find civil contempt, the Court in that case said (at 427):

> "... in order to be found guilty of even a civil contempt, it must appear that the appellants were doing some-

6. The sentence begins at the bottom of 427.

thing which constituted a violation of the letter or spirit of the injunction."

Here, the evidence is replete with actions by Petitioners which both violated the letter and the spirit of the injunctions.

V. The Injunctions May Not Be Collaterally Attacked.

It is well established by the decisions of this and other courts, that the validity of an injunction order which has been disobeyed is not open in a criminal contempt proceeding to question in the slightest degree. Disobedience constitutes contempt even though such order may be set aside on appeal. *Walker v. City of Birmingham,* 388 U.S. 307, 87 S.Ct. 1824 (1967); *United States v. United Mine Workers of America,* 330 U.S. 258, 67 S.Ct. 677 (1947); *Cliett v. Hammonds,* 305 F.2d 565 (C.A. 5, 1962).

Neither may an injunction in a contempt proceeding be collaterally attacked. *Schmegmann Bros. Giant Super Markets v. Hoffman-La Roche, Inc.,* 221 F.2d 326 (C.A. 5, 1955), cert. den. 350 U.S. 839, 76 S.Ct. 77; *Petition of Curtis,* 240 F.Supp. 475, affmd. *sub nom Ford v. Boeger,* 362 F.2d 999 (C.A. 8, 1966), cert. den. 386 U.S. 914, 87 S.Ct. 857, rehearing den. 386 U.S. 978, 87 S.Ct. 1160.

VI. The Injunctions Enjoined the Activities Engaged in.

Petitioners Muniz and Local 70 argue that the injunctions did not specifically enjoin the activity in which they engaged in, i.e., "inducement of employees of suppliers and delivery drivers."[7] The evidence demonstrated that in addition to such activity, Muniz was present with other pickets

7. Petition in No. 73-1924, pp. 13-15.

at both the customer and loading entrances of a Lucky store in Fairfax in Marin County. The pickets carried signs bearing the legends, "San Rafael Unfair To Teamsters," "Unfair to Teamsters." Muniz told Lucky's transportation supervisor that he (Muniz) had to back Local 21 and that the pickets would be removed if Lucky removed its advertisements from the Independent Journal (R. 536). Among others representing Local 70 in picketing at Lucky's and other stores in Marin County were business agent Nunes, and members William Dawson and John Spratt (Tr. 301, 386-387, 394-395, 468-471, 481-485, 488, 490-491, R. 535; Pet'r. Exhs. 7-9, 12-15, 54, 68-70, 85, 121). At another market, Petrini's, the Temaster pickets besides carrying Teamster signs, also distributed handbills of Local 21 calling for a total boycott of stores advertising in the Independent-Journal (R. 552, 569).

Thus, the activities of Muniz and Local 70 were not just confined to inducement of employees of suppliers and delivery drivers, which activity in itself is a secondary boycott proscribed by Section 8(b)(4)(B) of the National Labor Relations Act and which statutory language was spelled out in the injunctions. Their very presence at the stores with picket signs and their distribution of Local 21's handbills calling for a total boycott of those stores, was threatening, coercive and restraining conduct against the stores and other persons by appealing to consumers not to patronize those stores in violations of the injunctions. It was secondary boycott activity within the language of the injunctions and of the National Labor Relations Act.

Moreover, Muniz and Local 70 were participants in a plan and scheme with the other contemnors to impose a complete boycott on Marin County. Thus, as joint ventures

or co-conspirators with the other contemnors, they were each responsible and liable for the conduct of each other in putting into effect and carrying out that plan and scheme.

Moreover, this Court in dealing with a decree couched in the language of the Fair Labor Standards Act, held that immunity from contempt for violations of the decree could not be claimed because such violations were not specifically enjoined. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 69 S.Ct. 497 (1949).

The decree in that case enjoined any practices which were violations of the Act. It directed the respondents to obey various provisions of the Act, which were spelled out in the language of the Act. Commenting on the same position as advanced here by Local 70, Mr. Justice Douglas, writing for the majority, stated (69 S.Ct. 500):

> "It does not lie in their mouths to say that they have an immunity from civil contempt because the plan or scheme which they adopted was not specifically enjoined. Such a rule would give tremendous impetus to the program of experimentation with disobedience of the law which we condemned in Maggio v. Zeitz, supra, 333 U.S. at page 69. . . . The instant case is an excellent illustration of how it could operate to prevent accountability for persistent contumacy. Civil contempt is avoided by showing that the specific plan adopted by respondents was not enjoined. Hence a new decree is entered enjoining that particular plan. Thereafter the defendants work out a plan that was not specifically enjoined. Immunity is once more obtained because the new plan was not specifically enjoined. And so a whole series of wrongs is perpetrated and a decree of enforcement goes for naught."

As Mr. Justice Douglas also pointed out (at 500):

> "That result not only proclaims the necessity of decrees that are not so narrow as to invite easy evasion. . . ."[8]

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8. Petitioners are not novices in the field of secondary boycotts or injunctions. That they do not function in a mileu of naivite with respect to violations of the National Labor Relations Act and of injunctions, is attested to by the many cases in which they have been involved before the National Labor Relations Board and the Courts. *NLRB v. Int'l Longshoremen's and Warehousemen's Union, Local 10,* 210 F.2d 581 (C.A. 9, 1954); *NLRB v. ILWU, Local 10,* 214 F.2d 778 (C.A. 9, 1954); *NLRB v. Erkkila* (DC No. D. Calif. 1958) 42 LRRM 2594; *Int'l. Longshoremen's and Warehousemen's Union, Local 10 (Pacific Maritime Assn. & Milton Moore),* 121 NLRB 938 (1958); *NLRB v. ILWU, Local 10,* 283 F.2d 558 (C.A. 9, 1960); *ILWU, Local 10 (Matson Navigation Co.),* 140 NLRB 449; *ILWU, Local 10 (Howard Terminal),* 147 NLRB 359; *ILWU, Local 10, (Johnson Lee, et al),* 155 NLRB 1231; *Hoffman v. Local 10, Longshoremen* (D.C. No. D. Calif. 1966) 61 LRRM 2339 (sec. boycott and 10(1) injunction); *United States v. ILWU, Local 10* (DC No. D. Calif. 1971) 78 LRRM 2841 (civil contempt); *Johansen v. Longshoremen (California Cartage Co.),* 80 LRRM 2521 (DC No. D. Calif. 1972). The latter case involved violations of the secondary boycott and hot cargo provisions. An injunction under section 10(1) was issued. A week after the injunction was issued, the hot cargo provision was reimplimented under another contention by Local 10, which resulted in a further court proceeding broadening the injunction. That situation demonstrates the wisdom of Mr. Justice Douglas' statement, *supra. Johansen v. Longshoremen (California Cartage Co.),* 80 LRRM 2895.

Hoffman v. Locals 70 and 85, Teamsters (DC No. D. Calif. 1969) 72 LRRM 2353 (sec. boycott and 10(1) injunction); *Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 (Sam-Joe, Inc. d/b/a Smiser Freight Services),* 174 NLRB 98 (1969, sec. boycott); *Teamsters Local 70 (Granny Goose Foods),* 195 NLRB No. 102, 79 LRRM 1448 (1972); *Teamsters Local 70 (Sam-Jo, Inc.),* 197 NLRB No. 46, 80 LRRM 1354 (1972); *Teamsters, Local 70 (Sea-Land of Calif.),* 197 NLRB No. 24, 80 LRRM 1300 (1972), in which because of "a proclivity to violate the Act," a broad remedial order was issued, which was enforced, *NLRB v. Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70,* 490 F.2d 87 (C.A. 9, 1973).

VII. No Jury Trial Was Mandatory.

Petitioner Local 70 asserts a right to a jury trial because a fine in excess of $500 was imposed upon it.[9]

This Court in *Cheff v. Schnackenberg,* 384 U.S. 373, 86 S.Ct. 1523 (1966) reiterated that the decisions of this Court settled the rule that the right to a trial by jury "does not extend to every criminal proceeding." It was there held that since *Cheff* received a sentence of six months imprisonment, and since the nature of criminal contempt, an offense *sui generis,* does not, of itself warrant treatment otherwise, that *Cheff's* offense can be treated only as "petty" in the eyes of the statute and this Court's prior decisions. So holding, it was concluded that *Cheff* was properly convicted without a jury (86 S.Ct. 1526).

Interestingly enough, this Court pointed out in *Cheff* that the corporation of which *Cheff* was an officer was fined $100,000 in the same contempt proceeding and that the corporation's petition for a writ of certiorari was denied (86

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9. While we have undertaken to discuss the jury issue, we believe that Local 70 has no standing to urge that issue. It did not raise it in the Court of Appeals. Muniz cannot raise it because he was neither imprisoned nor fined. He was placed on probation for a year. *Frank v. United States,* 395 U.S. 147, 89 S.Ct. 1503 (1969). In their brief in the Court below, while Muniz and Local 70 state they "join and adopt all of the argument made by counsel for each of the other Labor Organizations and individuals found to be in contempt with respect to procedural, substantive and given [sic] matters," they state their brief "will dwell only on matters that are of particular concern to Local 70 and James Muniz" (Muniz and Local 70 Br., p. 3). No where in that brief do they discuss the jury issue. In their petition for rehearing in the Court of Appeals, they only assert two grounds, (1) notice of the injunctions and (2) the quantum of proof. Thus, they apparently did not regard the jury issue as of "particular concern" to them (Muniz and Local 70 Pet. for Rehearing, pp. 1-2). Petitioners Muniz and Local 70 are in no position to advance such issue now. *Adickes v. S.H. Kress & Co.,* 39 U.S. 144, 90 S.Ct. 1598 (1970); *State v. Taylor,* 353 U.S. 553, 77 S.Ct. 1037, 1039 (1957).

S.Ct. 1523; *Holland Furnace Co. v. Schnackenberg,* 381 U.S. 924, 85 S.Ct. 1559.

Recognizing in *Cheff* that by limiting its decision to cases where a six months sentence was imposed may leave the lower courts "at sea" in instances involving greater sentences, this Court in the exercise of its supervisory power and under the peculiar power of the federal courts to revise sentences in contempt cases, ruled further that sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof.

The fact that review was denied the corporation fined $100,000 in the same contempt proceeding and the fact that the court explicitly ruled trial by jury need not be granted in criminal contempt cases where the sentence is six months or less and must be granted where the sentence is more than six months, makes it clear that the amount of the fine does not determine whether a jury trial shall or shall not be granted. It is obvious from *Cheff* that this Court's concern was with deprivation of liberty and not the monetary penalty.

Subsequent decisions of this Court support our position on this issue. See, *Bloom v. Illinois,* 391 U.S. 194, 88 S.Ct. 1477 (1968); *Dyke v. Taylor Implement Mfg. Co.,* 391 U.S. 216, 88 S.Ct. 1472 (1969); *Frank v. United States,* 395 U.S. 147, 89 S.Ct. 1503 (1969); *Baldwin v. New York,* 399 U.S. 66, 90 S.Ct. 1886 (1970). In an earlier decision, not overruled, this Court held that criminal contempts are not subject to jury trial as a matter of constitutional right. *Green v. United States,* 356 U.S. 165, 78 S.Ct. 632, 643 (1958).

Prior to the *Cheff* case, this Court denied review in a non-jury criminal contempt proceeding in which the contemnor, a union, was fined $15,000 and the union's business

manager was fined $5000. *In the Matter of Local 825, Int'l. Union of Operating Engineers, Et al,* 57 LRRM 2143 (C.A. 3, 1964), [10] cert. den., 379 U.S. 934, 85 S.Ct. 326. See also, *In re Jersey City Education Ass'n.,* 115 N.J. Super. 42, 287 A.2d 206, in which a fine of $10,000 was levied against a union in a non-jury criminal contempt proceeding and which this Court declined to review, *sub nom Jersey City Education Association Et al v. New Jersey,* 404 U.S. 948, 92 S.Ct. 268 (1971).

Cheff must, therefore, be read in the light of *Green v. United States, supra* and the historical background therein discussed. So reading *Cheff,* it must be confined to situations where imprisonment is involved in criminal contempt proceedings and not where a fine is imposed. This is so, unless this Court is prepared to upset "a long and unbroken line of decisions involving contempts ranging from misbehavior in court to disobedience of court orders," which "establish beyond peradventure that criminal contempts are not subject to jury trial as a matter of constitutional right," *Green v. United States,* 356 U.S. 183, 78 S.Ct. 642-643.[11]

CONCLUSIONS

There is no constitutional question involved, nor any important question of federal law requiring decision by this Court.

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10. Does not appear to be reported in the Federal Reporter.

11. N. 14 of *Green, supra,* lists the major decisions of this Court discussing the relationship between criminal contempts and jury trial, in which it was concluded or assumed that such proceedings are not subject to trial by jury under either Article III, § 2, or the Sixth Amendment.

In light of the facts and the law, it is submitted that the petitions for a writ of certiorari should be denied.[12]

Respectfully submitted,

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August 26, 1974.

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12. Muniz and Local 70 assert that "'the fundamental issue raised" in their petition "is the extent to which government by injunction in labor disputes is to be countenanced," (Pet. p. 27). This is not an issue for the Court. It is a matter to be addressed, if anywhere, to Congress. That body has specifically provided for injunctions under the National Labor Relations Act [§§ 10(j) and 10(1); 29 U.S.C. 160(j) and (1)]. We are here only concerned with violations of two injunctions issued under Section 10(1).

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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1813

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL NO. 10, PETITIONER

v.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD

No. 73-1924

JAMES R. MUNIZ AND BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA, PETITIONERS

v.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. i–xvi)[1] is reported at 492 F. 2d 929. The district

[1] "Pet. App." refers to the appendix to the petition in No. 73-1813. "R." refers to the Clerk's Record, comprising volumes

court's Order and Adjudication in Civil Contempt (R. 1197–1205), Findings of Fact and Conclusions of Law re: Civil Contempt Proceedings (R. 1308–1321), Order and Adjudication in Criminal Contempt (R. 1194–1196), Findings of Fact and Conclusions of Law re: Criminal Contempt Proceedings (R. 1249–1262), Judgment Imposing Fines and Penalties in re: Criminal Contempt (Tr. 2727–2736), and Order re: Reimbursement of Costs and Expenses (R. 1460–1464) are set forth respectively in Appendices A through F, *infra*, pp. 1a–53a.

JURISDICTION

The judgment of the court of appeals was entered on January 25, 1974, and amended on March 7, 1974. Petitions for rehearing and rehearing *en banc* were denied on March 26, 1974 (Pet. App. xvii–xviii). The petition in No. 73–1813 was filed on June 1, 1974, and in No. 73–1924 on June 24, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. The petition in No. 73–1813 presents these questions:

(a) Whether the district court properly found that petitioner Local 10 had actual notice of and was bound by the outstanding injunctions.[2]

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1 through 6 of the record in the court of appeals. "Tr." refers to the Reporter's Transcript, comprising volumes 7 through 28 of that record. "Exh." refers to the exhibits introduced in evidence in the district court.

[2] The petition in No. 73–1924 presents a similar question (Pet. 2, question 1).

(b) Whether the district court applied the proper standard of proof in finding petitioner Local 10 in civil contempt of the injunctions.

2. The petition in No. 73–1924 presents these additional questions:

(a) Whether the injunctions prohibited the conduct found to be contumacious.

(b) Whether 18 U.S.C. 3692 requires a jury trial in a proceeding to adjudge a union and its officers in criminal contempt for having violated injunctions issued by the district court pursuant to Section 10(*l*) of the National Labor Relations Act.

(c) Whether a jury trial was constitutionally required in order to subject the unions to the fines for criminal contempt imposed in this case.

STATUTES INVOLVED

The relevant statutory provisions are set forth in the petition in Nos. 73–1924, pp. 3–4, and in Appendix G, *infra,* pp. 54a–57a.

STATEMENT

A. THE INJUNCTION ORDERS OF FEBRUARY 13 AND APRIL 28, 1970

California Newspapers, Inc., doing business as the Independent Journal (Journal), publishes a daily newspaper of general circulation in Marin County, California. In January 1970, San Francisco Typographical Union Local 21 (Local 21) commenced picketing the Journal's San Rafael, California, publishing plant (Pet. App. ii–iii). On February 11, 1970, the National Labor Relations Board's Regional Direc-

tor, pursuant to a charge filed by the Journal, petitioned the district court under Section 10(*l*) of the National Labor Relations Act for a temporary injunction against Local 21 and Locals 85 and 287 of the Teamsters (Locals 85 and 287). The petition alleged that the named respondents were engaging in a prohibited secondary boycott by, *inter alia,* picketing to induce employees at the Port of San Francisco to refuse to work, with an object of forcing their employers to cease doing business with the Journal (Pet. App. iii).

On the same date, February 11, the district court issued a Temporary Restraining Order and Order to Show Cause (Court Exh. 5), enjoining Local 21, its "officers, representatives, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them or any of them * * * until February 13, 1970 at 5:00 p.m. and not longer without the further order of this Court, from * * * continuing to picket at or in the vicinity of Pier 46A at the Port of San Francisco." Specifically, the order enjoined them, *inter alia,* from:

> (b) ENGAGING IN, or by picketing, orders, directions, solicitation, requests or appeals, howsoever given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect * * * INDUCING OR ENCOURAGING any individual employed by Garden City Transportation Company, Ltd., or by any motor carrier or other person engaged in commerce or in an industry, affecting commerce (other than Jour-

> nal), TO ENGAGE IN, a strike, slowdown or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service; or sanctioning, supporting or promoting any such strike or refusal; or in any such or similar manner or by any other means, * * * THREATENING, COERCING OR RESTRAINING said employers, or any other person engaged in commerce or in an industry affecting commerce (other than Journal)—where in either case AN OBJECT THEREOF is: (1) to force or require Powell River-Alberni Sales Limited (herein called Powell), or any other person, to cease doing business with Journal; * * *.

The order further directed all of the respondents named in the petition to show cause on February 13, why they should not be enjoined as requested in the petition pending the final disposition of the unfair labor practice case by the Board.

On February 13, 1970, a deputy United States Marshal served a certified copy of the Temporary Restraining Order and Order to Show Cause upon petitioner Longshoremen's Union Local 10 (Local 10) by leaving it with the person in charge of Local 10's office at 400 North Point Street, San Francisco, California (Tr. 973–975; Pet. Exh. 121).[3] On the same

[3] Local 10 is the collective bargaining representative of longshore employees at the Port of San Francisco, where the picketing and related conduct took place. In its annual report filed with the United States Department of Labor (Pet. Exh. 121), Local 10 designated its North Point Street Office as its address for receiving official mail, without specifying that such mail be sent in care of any particular official or person.

day, after a hearing, the district court entered a temporary injunction, pending a final disposition by the Board, enjoining all of the named respondents (Locals 21, 85, and 287), their agents, and all other labor organizations acting in concert or participation with them from engaging in the conduct specified in the temporary restraining order which had been served upon Local 10 (R. 426–429).

On April 28, 1970, the Regional Director filed a second petition for a Section 10(*l*) injunction against Local 21, based on charges filed by the Journal and the Emporium-Capwell Corporation. They alleged that Local 21 was further violating Section 8(b)(4)(B) of the Act by picketing and distributing handbills appealing to the public not to patronize various retail stores because they were advertising in the Journal. On the same date, Local 21 consented to the entry of an order as requested in the petition (R. 439–441), enjoining "Local 21 * * * and all members, persons and labor organizations acting in concert or participation with it, * * * pending the final disposition of the matters here involved pending before the [Board] * * *," from engaging in the charged unlawful conduct at the picketed stores or at the premises of other stores advertising in the Journal, or from:

> Threatening, coercing or restraining [the named firms] or any other firm advertising in the Independent Journal, by consumer picketing or by any like or related acts or conduct, where an object thereof is to force or require the said advertisers to cease advertising in the Independent-Journal newspaper or to cease doing business with [the Journal].

Local 21 gave extensive publicity to the injunction and to a subsequent civil contempt proceeding against it.[4] They were the subject of several articles in the "Strike Bulletin" periodically published by Local 21 and distributed to its members. Local 21 made clear to its membership that, with the assistance of Bay area unions such as the Teamsters and the Longshoremen, it would continue to picket and campaign against firms which traded with the Journal, regardless of whether such activity violated the outstanding injunctions. (Tr 2292, 2299; Pet. Exh. 213, 214, 215, 216.)

B. THE PRESENT CONTEMPT PROCEEDINGS

1. The procedure followed by the district court

On October 19, 1970, the Board's Regional Director filed with the district court a petition (R. 459–476), supported by affidavits (R. 477–695), to adjudge Locals 21 and 10, and Teamsters Locals 70 and 85, and certain of their officials, including petitioner Muniz, president of petitioner Local 70, in civil and criminal contempt for their failure to obey the injunctions entered by the district court on February 13 and

[4] Notwithstanding the consent injunction, Local 21 continued to engage in substantially the same picketing. On June 24, 1970, the district court found Local 21 and four of its officials in civil contempt by reason of their refusal to comply with the order. The adjudication (except as to two officials not involved here) and the Board's subsequent decision in the unfair labor practice case, finding that Local 21 had violated Section 8(b)(4)(B) of the Act by its picketing before and after the issuance of the injunction (*San Francisco Typographical Union No. 21 (California Newspapers, Inc. and Emporium-Capwell Corp.)*, 188 NLRB 673), were affirmed by the court of appeals. 465 F. 2d 53 (C.A. 9).

April 28, 1970. The petition charged that the respondents, acting in furtherance of a joint venture, had committed at least 28 violations of the outstanding injunctions. The district court ordered the named respondents to show cause why they should not be adjudged in civil and criminal contempt, and subsequently heard argument on certain preliminary matters, including motions by the respondents for severance of the civil and criminal contempt proceedings, and for a jury trial in the criminal contempt proceeding.

The court denied the motion for a jury trial. Respecting severance, it ruled that it would hear the criminal contempt charge first under the rules of evidence applicable to such proceedings, that the evidence there would be deemed part of the record in the subsequent civil contempt proceeding, and that in the latter proceeding it would receive any additional evidence which the parties might offer which would be admissible in a civil contempt proceeding (Tr. 106–107, 115).

The district court heard testimony on the contempt petition between November 3 and December 15, 1970, when the Board completed the presentation of its case. The Board introduced no evidence on the civil contempt beyond that introduced with respect to the criminal contempt. Respondents participated fully in the contempt proceedings, cross-examined Board witnesses and presented argument on the evidence and the law: however, petitioners Local 70, Muniz, and Local 10 declined to present any evidence (Tr. 2609–2615).

Pursuant to its ruling at the outset of the hearing, the court held that the record in the criminal contempt proceeding would be considered as part of the record in the civil contempt proceeding; the parties agreed that the latter record stood as "submitted * * * for purposes of passing on the issue of civil contempt * * *" (Tr. 2640-2641).

After the district court rendered its judgment, finding all respondents to be in both civil and criminal contempt, Local 10 contended that it had not rested its case as to the civil contempt (Tr. 2646). The court thereupon set aside the adjudication in civil contempt and reopened the matter to receive further evidence (Tr. 2742). All of the respondents except Local 10 declined to submit additional evidence (Tr. 2742, 2750). The court received in evidence an affidavit by the President of Local 10 stating in substance that he had no knowledge of the outstanding injunctions until after the alleged contumacious conduct (Tr. 2749; R. 1230). The court then reaffirmed the adjudication of civil contempt as to all respondents.

2. The district court's findings and orders

The district court found, with respect to the allegations of both civil and criminal contempt, that all of the respondents "[o]n or about, or prior to October 7, 1970 * * * embarked upon a joint plan, program and campaign to create a boycott of goods, materials, commodities and services destined to, consigned to, or utilized by firms advertising in the Jour-

nal or to firms doing business with the Journal" (Apps. B, D, *infra*, pp. 13a, 31a); that "in furtherance and support of their aforesaid joint plan, program and campaign" they engaged in numerous acts of picketing, oral inducement of work stoppages, threats and harassment (*id.* at 13a–19a, 31a–37a); and that by such acts and conduct they induced and encouraged employees of retail stores and other picketed firms to engage in work stoppages, and "threatened, coerced and restrained" the firms, with the object of forcing them to cease advertising in the Journal or otherwise doing business with the Journal or each other, and forcing their customers and suppliers to cease doing business with them (*id.* at 19a–20a, 37a–39a).[5]

[5] Respondents' widespread campaign of picketing, threats, harassment, and oral inducement of neutral employees to engage in work stoppages, resulted in a largely successful effort to "quarantine" Marin County and its more than 200,000 inhabitants, by shutting off deliveries of foodstuffs and other goods (Tr. 2055, 2298–2299; Pet. Exh. 216). Although the campaign was initially organized by Local 21 (R. 480–485), much of the picketing and related conduct was committed by agents and members of Teamsters Locals 70 and 85. In particular, Local 70 president Muniz and his counterpart, Local 85 business manager Richardson, worked closely together throughout the campaign (see, *e.g.*, R. 485–486, 496–497, 639–642). Moreover, in October 1970, Local 10 announced in its official publication, "Longshoremen's Bulletin," that "The AFL-CIO, ILWU, Teamsters, United Farmworkers * * * are making a joint effort to set up formal picket lines outside of Companies that advertise in the Independent Journal"; it solicited the help of its members (Tr. 2497–2500; Pet. Exh. 175). On October 16, 1970, Local 10 transported its members and those of the Seafarers' Union to Marin County, where they picketed retail stores (Tr. 2497–2500; Pet. Exh. 175. See also R. 545, 563–564, 588, 716;

The court also found that the respondents "at all times material herein * * * had notice and knowledge of [the injunctions]" (*id.* at 12a, 30a) and adjudged all of them in civil contempt "by reason of their disobedience of and resistance to, and their failure and refusal to comply with," those orders (App. A, *infra*, pp. 2a–3a). It also adjudged Locals 21, 85, and 70, and certain of the individual respondents (Muniz, Richardson, and Local 21 organizer Abrams) "in criminal contempt of this Court by reason of their wilful disobedience of and resistance to, and their wilful failure and refusal to comply with" the two injunction orders (Apps. C, D, *infra*, pp. 24a–25a, 39a–40a). The court emphasized that it failed to find Local 10 and Local 21 vice president DeMartini in criminal contempt solely because the proof of their involvement in the contumacious conduct fell short of demonstrating the wilfulness required of criminal, as opposed to civil, contempt (Tr. 2639).

With respect to the civil contempt, the district court directed all respondents to purge themselves of such contempt by taking certain affirmative action, including compliance with the injunctions and posting of notices. The court also imposed a fine of $7,500 for each day that a respondent union, and $100

Tr. 985, 995–997, 1025, 1126, 1129–1130, 2022, 2250; Pet. Exhs. 180, 181).

Local 21 organizer Abrams, reporting to the membership on the boycott campaign, praised the "support * * * we are receiving from * * * 'ILWU, whose leadership and participation have been absolutely outstanding' and the 'mighty Teamster organization, * * * with accolades to * * * Jim Muniz and Tim Richardson'" (Tr. 2063–2064; Pet. Exh. 225).

for each day that an individual respondent, failed to comply with these orders.

With respect to the criminal contempt, the court, after considering a pre-sentence report submitted by the Regional Director and the arguments of counsel, ordered each of the unions (Locals 21, 85, and 70) to pay a fine of $25,000, subject to the qualification that payment of $15,000 of that amount would be suspended for one year and remitted to the union upon a determination by the court that it had not further violated the injunctions. The court placed the individual respondents (Muniz, Richardson, and Abrams) on probation for one year, with the understanding that if they engaged in any further violations of the injunctions they would be subject to a sentence of imprisonment of not more than six months. (App. E, *infra*, pp. 43a–46a.) The court rejected the unions' contention that they could not be fined more than $500 without a jury trial (App. E, *infra*, pp. 46a–47a).

3. The decision of the court of appeals

The court of appeals affirmed the judgments of civil and criminal contempt (Pet. App. vi). The court found that "the evidence, which was voluminous, * * * clearly justified and supported the [district] court's findings as to both criminal and civil contempts," that "[t]he language of the injunctions was abundantly sufficient," and that respondents and their attorneys were "fully apprised of the charges," but "deliberately chose to risk not to obey them" (Pet. App. vi–vii).

The court also held that the respondents were not entitled to a jury trial in the criminal contempt proceedings (Pet. App. ix–xvi).

ARGUMENT

1. Petitioners' contention (Local 10 Pet. 18–19; Local 70 and Muniz Pet. 10–13) that they did not have "actual notice" of the injunction orders was properly resolved against them by the district court, whose findings the court of appeals affirmed. It has long been settled "that one who knowingly aids, abets, assists, or acts in active concert with, a person who has been enjoined in violating an injunction subjects himself to civil as well as criminal proceedings for contempt even though he was not named or served with process in the suit in which the injunction was issued or even served with a copy of the injunction." *Reich* v. *United States,* 239 F. 2d 134, 137 (C.A. 1), certiorari denied, 352 U.S. 1004. See also *Regal Knitwear Co.* v. *National Labor Relations Board,* 324 U.S. 9, 13–14; *McGraw-Edison Co.* v. *Preformed Line Products Co.,* 362 F. 2d 339, 344 (C.A. 9), certiorari denied, 385 U.S. 919. The law is equally settled that the elements of civil and criminal contempt, including knowledge of the injunction order, may be established by circumstantial evidence. *Walker* v. *City of Birmingham,* 388 U.S. 307, 312, n. 4.

Local 85, with respect to the February 13 injunction, and Local 21 with respect to both injunctions, were parties to the proceeding with full knowledge of the injunction orders. The district court properly found that knowledge of the injunction orders by

Local 70 and its president Muniz could be inferred "beyond a reasonable doubt" from the close collaboration between Muniz and agent Richardson of Local 85, which repeatedly manifested itself throughout the secondary boycott campaign (n. 5, *supra*). As the court stated in sentencing the respondents, "it would be ridiculous to hold that Mr. Muniz, who was president of Local 70 and over there on the ground taking an active part in it in connection with people from the other labor unions, didn't know about the order affecting one of his kindred teamster unions" (Tr. 2728; App. E, *infra*, p. 42a). The court's finding was further supported by Local 21's widespread and repeated publicity concerning the injunction orders and the evidence of close cooperation between Local 21 and the other unions (*supra*, pp. 7, 10–11).[6]

Similarly, the district court was warranted in finding that Local 10 had knowledge of the injunctions. It was served with a copy of the temporary restraining order and the order to show cause in that proceeding (*supra*, p. 5).[7] This put Local 10 on notice that Local 21 and all other unions acting with it were enjoined, at least until February 13, 1970, from engag-

[6] Under established principles, evidence of general discussion of a matter, or the likelihood of such discussion, within all or part of a group, supports an inference of knowledge of that matter by a member of that group. 2 Wigmore, *Evidence*, §§ 245, 261, pp. 43, 83–84, (3d ed., 1940) cited with approval in *State* v. *Costa*, 11 N.J. 239, 94 A. 2d 303.

[7] The orders having been served upon the person in charge of Local 10's office, the district court could properly discredit the denial of Local 10's president (*supra*, p. 9) and find that they came to the attention of responsible union officials.

ing in secondary boycott activity in furtherance of the Journal strike, and that it was possible that the injunction would be continued after the hearing on February 13. In these circumstances, Local 10 was under an obligation to inquire whether any "further order of the court" had been entered before engaging in a self-admitted "joint effort to set up formal picket lines outside of Companies that advertise in the Independent Journal" (n. 5, *supra*). Moreover, as with Local 70, Local 10's close cooperation with Local 21 and the latter's widespread and repeated publicity concerning the injunctions makes it reasonable to infer that Local 10 was aware of them.

2. There is no substance to Local 10's contention (Pet. 9–18) that the district court used an erroneous standard of proof in finding it guilty of civil contempt. In its December 24, 1970, adjudication in civil contempt, the court found that the allegations of the petition had been proven "by a preponderance of the evidence" (App. A, *infra*, p. 2a), and in its adjudication in criminal contempt, entered the same day, it found that the allegations of the petition had been proven "beyond a reasonable doubt" as to all respondents except Local 10 and Local 21 vice president DeMartini (App. C, *infra*, p. 24a). The court's subsequent findings as to civil and criminal contempt were identical in all respects except one: the court found that the extent of the involvement of Local 10 and DeMartini fell short of demonstrating the wilfulness which is an element only of criminal, not civil contempt (Tr. 2639; compare App. B, *infra*, pp. 21a–

22a with App. D, *infra*, pp. 39a–40a). All the elements of civil contempt were thus established by the same evidence which proved the criminal contempt; and, since the latter was proved "beyond a reasonable doubt," it follows that the civil contempt was likewise established by that same high standard.

3. There is likewise no merit in the contention of Local 70 and its agent, Muniz (Pet. 13–18), that the injunctions did not prohibit the conduct found to be contumacious—the inducement of suppliers and delivery drivers. The injunction of February 13, 1970, expressly prohibited Locals 21 and 85, and "all members, persons or other labor organizations acting in concert or participation with them," from "threatening, coercing or restraining * * * employers * * * (other than Journal)" and from "engaging in, or * * * inducing * * * any individual employed by * * * any person engaged in commerce * * * to engage in, a strike * * * or refusal * * * to perform any service * * * where * * * an object thereof is: (1) to force * * * any * * * person to cease doing business with Journal" (*supra*, pp. 4–5). The February 13 order thus barred, in furtherance of the Journal strike, any conduct proscribed by Section 8(b)(4)(B) of the Act, including the inducement of work stoppages by the employees of neutral, secondary employers.

To be sure, the immediate secondary boycott conduct which was the subject of the February 1970 injunction proceeding occurred at the Port of San Francisco. But the scope of the order was not limited geographically, nor can any such limita-

tion properly be read into it. The injunction was binding upon respondents "in relation to the prohibited conduct * * * throughout the United States" and contempt of that order "lay in the fact, not in the place, of the disobedience to the requirement." *Leman* v. *Krentler-Arnold Co.*, 284 U.S. 448, 451–452.

The injunction of April 28, 1970 (*supra*, p. 6), expressly prohibited Local 21, and all unions and persons acting with it, from "threatening, coercing or restraining" any firm advertising in the Journal, "by consumer picketing or by any like or related acts or conduct," in order to compel that firm to cease doing business with the Journal. Although the order contains no express reference to inducement or encouragement of employee work stoppages, it is well settled that picketing at the premises of a secondary employer, for the purpose of causing an interference with deliveries or supplies, constitutes an obvious form of coercion and restraint of that employer proscribed by Section 8(b)(4)(B) of the Act. *National Maritime Union of America* v. *National Labor Relations Board*, 346 F. 2d 411, 413–414 (C.A.D.C.); *National Labor Relations Board* v. *District Council of Painters*, #48, 340 F. 2d 107, 111 (C.A. 9). Accordingly, by prohibiting consumer picketing to force a cessation of business with the Journal and any related conduct for that same object, the April 28 injunction also forbade the picketing by Local 70, which took place both at consumer and loading entrances to the stores.

4. Local 70 and Muniz contend (Pet. 18–24) that under 18 U.S.C. 3692 they were entitled to a jury trial of the criminal contempt. The court of appeals re-

jected this argument on the ground that that provision applies only to contempt proceedings arising from injunctions issued in private litigation subject to the Norris-LaGuardia Act (Pet. App. viii–x). This conclusion is in accord with the views of most other courts of appeals,[8] and, as we show below, is correct.

18 U.S.C. 3692 provides in relevant part:

> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

With the exception of the words used to describe the type of contempt under consideration, this language is virtually identical to that of Section 11 of

[8] *Madden* v. *Grain Elevator, Flour & Feed Mill Workers*, 334 F. 2d 1014, 1020 (C.A. 7), certiorari denied, 379 U.S. 967; *Brotherhood of Locomotive Firemen* v. *Bangor & Aroostook Railroad Co.*, 380 F. 2d 570, 579–580 (C.A.D.C.), certiorari denied, 389 U.S. 327; *National Labor Relations Board* v. *Red Arrow Freight Lines*, 193 F. 2d 979, 980 (C.A. 5). See also, *United States* v. *Robinson*, 449 F. 2d 925, 931–932 (C.A. 9); *Schauffler* v. *Local 1291, International Longshoremen's Ass'n*, 189 F. Supp. 737 (E.D. Pa.), reversed on other grounds, 292 F. 2d 182 (C.A. 3). In *Philadelphia Marine Trade Ass'n* v. *International Longshoremen's Ass'n, Local 1291*, 368 F. 2d 932, 934 (C.A. 3), reversed on other grounds, 389 U.S. 64, relied upon by petitioners (Pet. No. 73–1924, p. 22), the court was not required to consider the present question, for the case involved a civil contempt proceeding for failure to comply with an order decreeing specific performance of a bargaining agreement—a matter which the court found did not "involve or grow out of a labor dispute."

the Norris-LaGuardia Act (App. G, *infra*, pp. 56a–57a), which was repealed when the revised Title 18 was enacted.[9] The change in language from Section 11, which covered "all cases arising under this Act," to Section 3692's inclusion of "all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute" did not alter the scope of the statute. For in transferring the provision from the context of labor disputes to the Criminal Code, Congress had to define its scope in terms which would limit its applicability to situations of the sort covered by the Norris-LaGuardia Act.[10] That Section 3692 was merely intended to codify Section 11 in the federal Criminal Code is confirmed by the Reviser's Notes which state that Section 3692 is "based on" Section 11 of the Norris-LaGuardia Act. H. Rep. No. 304, 80th Cong., 1st Sess., A176.

Consequently, Section 3692 is no more applicable to proceedings under the National Labor Relations Act than is the Norris-LaGuardia Act.[11] Section 10(h) of

[9] See Public Law 80–772, Section 21, 62 Stat. 866.

[10] The preamble of the Norris-LaGuardia Act states that "[n]o court of the United States * * * shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute," except in the narrowly defined class of cases thereafter described. Sections 4, 5, 7, 9, and 10 of the Norris-LaGuardia Act, in turn, define their scope in terms of injunctive relief in a "case involving or growing out of any labor dispute." 29 U.S.C. 101, *et seq.*

[11] This conclusion is confirmed by the debates on the jury trial provision of the Civil Rights Act of 1957 (Sec. 151, 71

the National Labor Relations Act expressly provides that, when "granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, * * * the jurisdiction of courts sitting in equity shall not be limited by the [Norris-LaGuardia] Act." As a result of this provision, proceedings under Section 10(*l*) of the National Labor Relations Act are excluded from the Norris-LaGuardia Act. See *Bakery Sales Drivers Union* v. *Wagshal*, 333 U.S. 437, 442; *Building and Construction Trades Council* v. *Alpert*, 302 F. 2d 594, 596–599 (C.A. 1). And, if the injunction suit is beyond the scope of the Norris-LaGuardia Act, a proceeding to obtain compliance with the injunction should be similarly excepted, since the latter proceeding is simply "a continuance of the earlier [Section 10(*l*)] action" and is the final "step in the enforcement" of the Section 10(*l*) order. National *Labor Relations Board* v. *Hopwood Retinning Co.*, 104 F. 2d 302, 305 (C.A. 2).[12]

Recently, however, the Court of Appeals for the

Stat. 638, 42 U.S.C. 1995). At that time, the view was repeatedly expressed that 18 U.S.C. 3692 was not applicable to suits brought by the government because it merely incorporated Section 11 of the Norris-LaGuardia Act. It was also noted that the National Labor Relations Act contained a specific exemption from the provisions of the Norris-LaGuardia Act. See 103 Cong. Rec. 8682–8687 (Congressman Celler); 8688–8691 (Congressman Keating); 12842–12843 (Attorney General Brownell).

[12] Congress was aware that the Norris-LaGuardia Act would be inapplicable to Section 10(*l*) proceedings. An alternative to Section 10(*l*) was proposed in the Senate which would have given private parties, rather than the Board, access to federal district courts to seek orders of the type Section 10(*l*) au-

First Circuit, in *Union Nacional de Trabajadores*, No. 74–1073, Original, decided August 14, 1974 (Supp. Pet. App. i–xviii) held that 18 U.S.C. 3692 requires a jury trial in a criminal contempt proceeding based on the defendants' alleged disobedience of a district court's order pursuant to Section 10(j) of the Act, which permits the Board, after issuance of an unfair labor practice complaint, to obtain a temporary injunction against the conduct alleged in the complaint. Although that case involved an injunction issued under Section 10(j), while the injunction in this case is under Section 10(*l*), both cases turn on the applicability of 18 U.S.C. 3692 to criminal contempts of labor injunctions to which the Norris-LaGuardia Act is not in terms applicable. The decision of the Court of Appeals for the First Circuit on this issue conflicts with that of the Court of Appeals for the Ninth Circuit in the present case. Because the issue is important in labor law, we believe that the Court should resolve the conflict.

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thorizes. See S. Rept. No. 105, 80th Cong., 1st Sess. 54–56 (Supplemental Views), 93 Cong. Rec. 4834–4847; Leg. Hist. of the Labor Management Relations Act, 1947 (G.P.O. 1948), 460–461, 1347–1370. An argument urged in its favor was that the proposed measure retained "in effect the provisions of sections 11 and 12" and "section 7, exclusive of clauses (c) and (e) of the Norris-LaGuardia Act," whereas "when the regional attorney of the NLRB seeks an injunction the Norris-LaGuardia Act is completely suspended, as are sections 6 and 20 of the Clayton Act." 93 Cong. Rec. 4834–4835, S. Rep. No. 105, 80th Cong., 1st Sess., 55 (Supplemental Views); Leg. Hist. of the Labor Management Relations Act, 1947 (G.P.O. 1948), 1348, 461. Congress rejected the proposal, concluding that adequate protection against abuse of the injunctive remedy was provided by permitting only the Board to seek it.

5. Local 70 further contends (Pet. 24–27) that the fine imposed on it for criminal contempt—$25,000, with $15,000 suspended for one year and subject to remission if there were no subsequent violations of the injunctions—was so serious a penalty that a jury trial was constitutionally required. In *Cheff* v. *Schnackenberg*, 384 U.S. 373, this Court, exercising its supervisory power over the federal courts, ruled that a federal court may impose a sentence for criminal contempt exceeding six months' imprisonment only after a jury trial or if a jury is waived.[13] However, neither in *Cheff*, nor in subsequent decisions[14] considering the propriety of penalties imposed without a jury trial, has the Court indicated that a jury trial is required where a fine in excess of $500 was imposed. Indeed, the Court has consistently declined to review criminal

[13] The Court indicated that it was guided in part by 18 U.S.C. 1(3), which provides that "[a]ny misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense."

[14] Thus, in *Bloom* v. *Illinois*, 391 U.S. 194 (state court adjudication in criminal contempt), and *Duncan* v. *Louisiana*, 391 U.S. 145 (state court conviction for a misdemeanor), the Court held that the sentences imposed—two years' imprisonment—involved such an impairment of personal liberty as to warrant classification of the offenses in question as "serious" rather than "petty," and thus to require a jury trial. Cf. *Dyke* v. *Taylor Implement Co.*, 391 U.S. 216 (jury trial not required where six-month jail sentence was imposed for criminal contempt). In *Frank* v. *United States*, 395 U.S. 147, the Court held, by analogy to 18 U.S.C. 3651, which authorizes the federal courts to suspend sentence and place on probation for a period of up to five years persons convicted of petty offenses, that a comparable penalty

contempt proceedings in which fines in excess of $500 were levied without a jury trial.[15]

The Sixth Circuit, however, in *United States* v. *R. L. Polk & Co.*, 438 F. 2d 377, held that a jury trial was required when a fine of $35,000 was imposed in an antitrust criminal contempt case. It ruled that any offense for which a fine of more than $500 was imposed was "serious" rather than "petty", even though the actual impact of the fine might well depend on the fiscal worth of the entity fined. 18 U.S.C. 1(3). The court of appeals in the instant case acknowledged the conflict (Pet. App. xvi, n. 8), but relied on a more flexible standard for determining whether a particular fine imposed for criminal contempt made it a "serious" offense requiring a jury trial. In the circumstances of this case it found the offense not to be serious.

In view of the conflict over the propriety of impos-

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for criminal contempt could be imposed without a jury trial. See also *Baldwin* v. *New York*, 399 U.S. 66, 69 ("no offense can be deemed 'petty' for purposes of the right to trial by jury where imprisonment for more than six months is authorized"). And see *Codispoti* v. *Pennsylvania*, No. 73-5615, decided June 26, 1974, and *Taylor* v. *Hayes*, No. 73-473, decided June 26, 1974.

[15] See *In re Local 825, Operating Engineers*, 57 LRRM 2143 (C.A. 3), certiorari denied, 379 U.S. 934 (union fined $15,000 and its business manager $5,000); *In re Holland Furnace Co.*, 341 F. 2d 548 (C.A. 7), certiorari denied, 381 U.S. 924 (company of which Cheff was president fined $100,000); *In re Jersey City Education Ass'n*, 115 N.J. Super. 42, 278 A. 2d 206, 213-215, certiorari denied, 404 U.S. 948 (union fined $10,000); *In re Fair Lawn Education Ass'n*, 63 N.J. 112, 305 A. 2d 72, certiorari denied, 414 U.S. 855 (union with 347 members fined $17,350). See also *Rankin* v. *Shanker*, 23 N.Y. 2d 111, 242 N.E. 2d 802, 807-808, stay denied, 393 U.S. 930 (union subject to fine of $10,000 per day).

ing a fine of that amount for criminal contempt without a jury trial, we do not oppose review of this question.

6. The standard for assessing the validity of contempt fines is that enunciated in *United States* v. *United Mine Workers*, 330 U.S. 258, 303:

> In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge.[16]

The court of appeals correctly concluded that the fines imposed by the district court were proper. The punitive fines amounted to $10,000 against each union—the balance of $15,000 was suspended and subject to remission if there were no future violations. This amount was not beyond the unions' financial means.[17] Nor was it disproportionate to the seriousness of the contumacious conduct found.[18]

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[16] In *Mine Workers*, the Court sustained a fine of $700,000 against the union, to be increased to $3,500,000 unless it complied within five days, with the outstanding injunction. 330 U.S. at 304–305.

[17] Each union has annual gross receipts in excess of $700,000 (Pet. Exh. 121, Presentence Report and Recommendations; Tr. 2676–2677).

[18] The unions were found to have committed at least 26 violations of the outstanding injunction orders (R. 1254–1259).

CONCLUSION

The petition for a writ of certiorari in No. 73–1813 should be denied. The petition for a writ of certiorari in No. 73–1924 should be granted with respect to questions 3 and 4 in that petition.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER G. NASH,
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JOHN S. IRVING,
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Deputy Associate General Counsel,

MARVIN ROTH,
Deputy Assistant General Counsel,
National Labor Relations Board.

OCTOBER 1974.

APPENDIX A

[Caption Omitted]

Civil No. C-70 895 WTS*

Order and Adjudication in Civil Contempt

December 24, 1970

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relation Board, herein called the Board, having duly petitioned this Court for an order adjudging San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), it Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 70), its officers and agents, and James R. Muniz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business Manager and Recording Secretary; and International Longshoremen's and Warehousemen's Union, Local No. 10

(herein called Respondent Local 10), and its officers and agents, in civil contempt of this Court by reason of disobedience of and resistance to, and failure and refusal to comply with, the Temporary Injunction Orders of this Court entered herein in Civil No. C–70 306 LHB on February 13, 1970, and in Civil No. C–70 895 WTS on April 28, 1970; and this Court having, on October 19, 1970, ordered the said Respondents to appear before this Court and show cause why they should not be adjudged in civil contempt of this Court; and the matter having come on for hearing before the Court initially on October 23, 1970, and on various dates thereafter; and Respondents having appeared personally and by counsel, and having been afforded full opportunity to offer evidence and to argue on the law and the facts; and it having been determined that this Court shall make Findings of Fact and Conclusions of Law as set forth below and enter such order as warranted by the evidence before the Court; now, therefore, upon all the pleadings and proceedings heretofore had herein,

The Court finds that the allegations of the Petition filed herein on October 19, 1970, particularly the allegations of Paragraphs III and IV, all of which allegations are hereby incorporated by reference herein, have been proved by a preponderance of the evidence; and the facts of such allegations constitute the findings of fact in this case; and it is hereby,

ORDERED, ADJUDGED AND DECREED that Respondents Local 21, Local 70, Local 85, Local 10 and individual Respondents DeMartini, Abrams, Muniz, and Richardson are, and have been, and they hereby are adjudged to be, in civil contempt of this Court by reason of their disobedience of and resistance to, and their failure and refusal to comply with, the Temporary Injunction Orders of this Court

entered herein on February 13, 1970, and on April 28, 1970; and it is further

ORDERED, ADJUDGED AND DECREED that said Respondents Local 21, Local 70, Local 85, Local 10, DeMartini, Abrams, Muniz and Richardson, and each of them, shall purge themselves of their said civil contempt of this Court, by:

(a) Fully complying with all the provisions of this Court's orders of February 13, 1970, and April 28, 1970;

(b) Notifying Arden-Mayfair, Incorporated (herein called Mayfair), Garden City Transportation Co., Ltd. (herein called Garden City), Lucky Stores, Inc. (herein called Lucky), Long's Drug Stores, Incorporated (herein called Long's), Safeway Stores, Incorporated (herein called Safeway), Foremost Dairy Company (herein called Foremost), United Markets, Inc. (herein called United), Ritz Foods (herein called Ritz), Petrini's Meat, Inc. (herein called Petrini's), Olson Brothers, Incorporated (herein called Olson), Sears, Roebuck & Co. (herein called Sears), Greyhound Bus Lines (herein called Greyhound), Parisian Bakeries, Inc. (herein called Parisian), American Bakeries Co. (herein called American), Nielsen Freight Lines, Inc. (herein called Nielsen), Rath Packing Company (herein called Rath), Kockos Brothers (herein called Kockos), Cala Foods, Inc. (herein called Cala), Baroni French Baking Co. (herein called Baroni), Kilpatrick's Bakeries, Inc. (herein called Kilpatrick's), Lincoln's Market (herein called Lincoln), Tuttle Cheese Co. (herein called Tuttle), Svenhard Bakeries (herein called Svenhard), Rawson Company (herein called Rawson), Armour and Company (herein called Armour), and The Coca-Cola Bottling Co. (herein called Coca-Cola), that they are free to continue or resume advertising in or doing

business with the Journal without fear of economic or other consequences from Respondents, or any of them, and that Respondents will not, by picketing or in any other manner, or by any other means, induce or encourage any individual employed by any of such firms, or any of their suppliers, or of any carrier making deliveries to or pickups from them, or of any person doing business with them to engage in any work stoppage or refusal in the course of his employment to perform work, or in any like or similar manner, threaten, coerce or restrain them, or any of them, or any person doing business with them, in order to force or require any such person to cease placing advertisements in the Journal or to otherwise cease doing business with California Newspapers, Inc., d/b/a San Rafael Independent Journal (herein called Journal).

(c) Posting Notices attached hereto as an appendix at all places where notices and communications to members of Respondents Local 21, Local 70, Local 85 and Local 10, are customarily posted, and maintaining said posted Notices for a period of at least sixty (60) consecutive days, said Notices stating that Respondents have been adjudged in civil contempt of this Court for their disobedience of, and resistance to, and their failure and refusal to comply with, the injunction orders entered by this Court on February 13 and April 28, 1970, and that Respondents will not repeat the conduct found to have violated the Court's orders, or further engage in, sanction, support, induce or encourage any acts or conduct in violation of said injunction orders; and by making available to Mayfair, Garden City, Lucky, Long's, Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's, Lincoln, Tuttle, Svenhard, Rawson, Armour and Coca-Cola signed copies of said Notices

for posting at their places of business if they so desire;

(d) As to paragraphs (b) and (c) above, Respondents shall have until January 21, 1971 to show cause why they should not comply with the said purgation provisions.

in Civil Contempt;

(e) Appearing in person before this Court on January 21, 1971, at four o'clock in the afternoon, Pacific Standard Time, and showing to this Court that Respondents have complied with paragraph (a) of this Order of Adjudication and Civil Contempt; and it is further

ORDERED, ADJUDGED AND DECREED that in the event of the failure or refusal of Respondents Local 21, Local 70, Local 85 or Local 10 to comply with the foregoing purgation provisions of this decree and to make the showing referred to in paragraph (e) above, attachment for civil contempt shall issue against such delinquent Respondent Local, and such delinquent Respondent Local shall pay to Petitioner a "compliance fine" of $7,500 a day for each day that such Respondent Local fails to comply with the purgation provisions of this decree and/or the Temporary Injunction Orders entered in this Court on February 13 and April 28, 1970; and it is further

ORDERED, ADJUDGED AND DECREED that in the event of the failure or refusal of Respondents DeMartini, Abrams, Muniz and/or Richardson to make the showing referred to in paragraph (e) above, attachment for civil contempt shall issue against such delinquent individual Respondent and that Respondent individual shall pay to Petitioner a "compliance fine" of $100 a day for each day that such Respondent individual fails to comply with the purgation pro-

visions of this decree and/or the Temporary Injunction Orders entered in this Court on February 13 and April 28, 1970; and it is further

ORDERED, ADJUDGED AND DECREED that this Court retains jurisdiction of this matter for purposes of determining and imposing a "compensatory fine" upon Respondents Local 21, Local 70, Local 85 and Local 10 to make reimbursement for costs and expenses, including reasonable counsel fees incurred in the investigation, preparation, presentation and final disposition of this proceeding for adjudication in civil contempt.

DATED AT San Francisco, California, this 24th day of December, 1970.

W. T. SWEIGERT,
United States District Judge.

APPENDIX B

[caption omitted]

Civil No. C-70 895 WTS

Findings of Fact and Conclusions of Law Re: Civil Contempt Proceedings

January 28, 1971

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, herein called the Board, having duly petitioned this Court for an Order to Show Cause why respondents San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers of America (herein called Respondent Local 70), its officers and agents, and James R. Muniz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business

Manager and Recording Secretary; and International Longshoremen's and Warehousemen's Union, Local No. 10, (herein called Respondent Local 10), and its officers and agents; herein jointly and severely referred to as respondents, should not be adjudged in civil contempt of orders of this Court entered on February 13, 1970 and April 28, 1970, and for other civil relief, and the petitioner having further requested this Court to institute, *sua sponte,* criminal contempt proceedings against said respondents, and each of them, and an order of this Court having been executed on October 19, 1970 requiring said respondents to appear before this Court on October 23, 1970, and show cause, if any there be, why they, and each of them, should not be adjudged in civil contempt of this Court as prayed, and to answer the petition filed herein, and further requiring said respondents to personally appear before the Court and show cause, if any there be, why they, and each of them, should not be adjudged in, and punished for, criminal contempt; and said respondents having appeared personally and by counsel, and the aforesaid matters having come on to be heard by this Court commencing on October 23, 1970, and during the course of these proceedings, petitioner having amended his petition to delete the name of Henry Montano as a respondent; and full opportunity having been afforded to all parties to offer testimony, evidence, exhibits, and arguments, and the Court having fully considered all the testimony, evidence, exhibits, and arguments offered, and, on December 24, 1970, this Court having issued its Order and Adjudication in Criminal Contempt as to Respondent Local 21, Respondent Local 85, Respondent Local 70, Respondent Abrams, Respondent Richardson and Respondent Muniz, and having on the same date issued its Order and Adjudication in Civil Contempt as to all the respondents, and this

Court, on January 21, 1971, having made Findings of Fact and Conclusions of Law Re: Criminal Contempt Proceedings supplimentary to and *in extenso* of the December 24, 1970 Order and Adjudication in Criminal Contempt, and this Court on January 22, 1971, having afforded all the respondents additional opportunity to offer evidence, testimony, exhibits, and argument on the civil contempt proceedings, and Respondent Local 10 having requested an opportunity to present additional evidence, and this Court having set aside the December 24, 1970 Order and Adjudication in Civil Contempt as to Respondent Local 10 for such purpose, and this Court having received and considered the additional evidence offered by Respondent Local 10 and upon consideration of such additional evidence and the entire record in this case, this Court hereby reaffirms its Order and Adjudication in Civil Contempt dated December 24, 1970 as to all the respondents and, supplementary to and *in extenso* of such order, hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I. On February 13, 1970, this Court made and entered an order enjoining and restraining Respondent Local 21 and Respondent Local 85, their officers, representatives, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them, or any of them, from:

(a) Continuing to picket at or in the vicinity of Pier 46A at the Port of San Francisco; or picketing cargo or shipments of newsprint or other supplies awaiting delivery to California Newspapers, Inc., d/b/a San Rafael Independent Journal (herein called Journal), or picketing the piers or terminals where such cargo or shipments are located, or picketing the

carriers of such cargo or shipments; or signaling or appealing to truckdrivers or other employees not to pick up, handle or work on such cargo or shipments at such piers or terminals, or otherwise to refuse to perform services for their respective employers at such piers or terminals; or

(b) ENGAGING IN, or by picketing, orders, directions, solicitation, requests or appeals, howsoever given, made or imparted, or by any like or related acts of conduct, or by permitting any such to remain in existence or effect, or by employee discrimination, reprisals, disciplinary proceedings or threats thereof, INDUCING OR ENCOURAGING any individual employed by Star Terminal Co., Inc., Garden City Transportation Co., Ltd., Globe-Wally's Fork Lift Service, Inc. (herein called Star, Garden City and Globe), or by any motor carrier, lift truck service company or other person engaged in commerce or in an industry affecting commerce TO ENGAGE IN, a strike, slow down or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service; or sanctioning, supporting, or promoting any such strike or refusal; or

In any such or similar manner or by any other means, including refusal to dispatch employees pursuant to contractual obligation or custom, THREATENING, COERCING OR RESTRAINING said employers, or any other person engaged in commerce or in an industry affecting commerce,

Where in either case AN OBJECT THEREOF is: (1) to force or require Powell River-Alberni Sales Limited (herein called Powell), or any other person, to cease doing business with Journal; or (2) to force or require Star, Garden City, or any other person, to cease doing business with Powell, or to force or require Globe, or any other person, to cease doing busi-

ness with Garden City, in order to compell Powell to cease doing business with Journal.

II. On April 28, 1970, this Court made and entered an order enjoining and restraining Respondent Local 21, its officers, representatives, agents, servants, employees, attorneys and all members, persons and labor organizations acting in concert or participation with it, from:

(a) Continuing or resuming its picketing of the following named employers at or in the vicinity of the stores listed below where an object of the picketing is to cause customers of these stores to cease buying products not advertised in The Independent Journal newspaper:

The Emporium
835 Market Street
San Francisco, California
The Emporium
1000 Northgate Fashion Mall
San Rafael, California
Mayfair Market
7th and H Streets
San Rafael, California
Lucky
720 Center Street
Fairfax, California
Big G Super
100 Harbor Drive
Sausalito, California
Big G Super
5651 Paradise Drive
Corte Madera, California
Longs Drugs
880 Sir Francis Drake Boulevard
San Anselmo, California
Longs Drugs
442 Las Gallinas Avenue
San Rafael, California

(b) Picketing at or in the vicinity of the premises of other firms which advertise in The Independent Journal newspaper where an object of the picketing is to cause customers of such firms to cease buying products not advertised in that paper;

(c) Appealing to the public, consumers and customers by means of handbills, oral statements, or otherwise, in conjunction with picketing, not to patronize the stores described in subparagraph (a) above, or any store owned by the firms named therein, or any other store advertising in The Independent Journal newspaper; or

(d) Threatening, coercing, or restraining The Emporium-Capwell Corporation, Arden-Mayfair Incorporated, Lucky Stores, Inc., Big G Super Markets, Inc., Longs Drug Stores Incorporated or any other firm advertising in The Independent Journal newspaper, by consumer picketing or by any like or related acts or conduct, where an object thereof is to force or require the said advertisers to cease advertising in The Independent Journal newspaper or to cease doing business with California Newspapers, Inc., d/b/a The Independent Journal.

III. The aforesaid injunction orders have been in full force and effect since their entry and respondents, and each of them, at all times material herein, have had notice and knowledge of their terms.

IV. (a) At all times material herein, Respondents DeMartini and Abrams have been Vice President and Organizer, respectively, of Respondent Local 21, and its agents within the meaning of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.* (herein called the Act).

(b) At all times material herein, Respondent Local 70 has been a labor organization within the meaning of the Act.

(c) At all times material herein, Respondent Muniz has been President of Respondent Local 70 and its agent within the meaning of the Act.

(d) At all times material herein, Respondent Richardson has been the Business Manager and Recording Secretary of Respondent Local 85 and its agent within the meaning of the Act.

V. On or about, or prior to, October 7, 1970, respondents embarked upon a joint plan, program and campaign to create a boycott of goods, materials, commodities and services destined to, consigned to, or utilized by firms, advertising in the Journal or to firms doing business with the Journal. In furtherance and support of their aforesaid joint plan, program and campaign:

1. On or about October 8, 1970, Respondent Abrams met with a group of approximately 15 men outside the Painters Union Hall on Mission and Tamalpais Streets in the City of San Rafael, California (hereafter referred to as San Rafael) during which meeting bumper stickers stating "Scabs Must Go" were distributed to members of the group. Thereafter, these men were dispatched by respondents to various street corners in San Rafael, where they engaged in stopping trucks of various carriers delivering merchandise and commodities to food markets and other firms in San Rafael advertising in the Journal, and, by oral appeals, by picketing, by obstructing traffic, and by other means, induce and encourage individuals employed by various carriers and food markets to refuse to make deliveries to firms advertising in the Journal, including Mayfair Market (herein called Mayfair). Among the individuals engaging in some of the aforesaid conduct was Respondent Richardson.

2. Also on or about October 8, 1970, respondents, including Respondent Richardson, picketed the delivery

area of Safeway, Inc. (herein called Safeway), located at 700 B Street in San Rafael, and induced and encouraged a driver of Safeway not to make a delivery.

3. Also on or about October 8, 1970, respondents by their agents, including Respondent Richardson and Respondent Muniz, harassed the driver of a truck of Garden City Transportation Co. Ltd. (herein called Garden City) on its return trip to Garden City's premises after making delivery of newsprint to the Journal, and picketed the premises of Garden City and its truck with signs, the legend on some of which read: "Teamsters on Strike—Scabs Must Go." As a consequence of such picketing, drivers of Garden City engaged in work stoppages and refusals to perform services for their employer. In addition, respondents threatened Garden City with the shutdown of its operations on October 9, 1970.

4. Also on or about October 9, 1970, respondents, including Respondent Richardson, picketed a store of Lucky Stores, Inc. (herein called Lucky) at 400 Las Gallinas Avenue, San Rafael, as a consequence of which drivers employed by various carriers were prevented from making deliveries to the said store. By such conduct, and by other means, respondents induced, encouraged and appealed to drivers employed by carriers and suppliers not to make deliveries.

5. Also on or about October 9, 1970, respondents picketed a Lucky store at 720 Center Street, Fairfax, California, as a consequence of which drivers employed by various carriers and suppliers refused to make deliveries to such store. By such conduct, and by other means, respondents induced and encouraged drivers of various carriers and suppliers not to make deliveries to such store.

6. Also on or about October 9, 1970, respondents picketed the premises of Foremost Dairy Company (herein called Foremost) in San Rafael and a store of Mayfair at 340 Third Street, San Rafael, and induced and encouraged drivers not to make pickups or deliveries.

7. Also on or about October 9, 1970, respondents picketed the entrance to the Red Hill Shopping Center, Sir Francis Drake Boulevard, San Anselmo, California, with signs some of which read: "Teamsters Support Independent Journal" and "Teamsters on Strike." Respondents, by such picketing and by other means, caused trucks delivering goods to the Safeway store located at 900 Sir Francis Drake Boulevard, San Anselmo, California, to turn away. Respondents also stopped trucks on Sir Francis Drake Boulevard, and induced and encouraged delivery drivers not to make deliveries to various Marin County retail stores.

8. On or about October 12, 1970, respondents, by their pickets and agents, by picketing and by other means, induced and encouraged drivers of Lucky not to perform services at the Lucky store located at 720 Center Street, Fairfax, California, and as a consequence prevented regular drivers from performing their duties for Lucky.

9. On or about October 12, 1970, respondents, by their agents, induced and encouraged delivery drivers not to perform services at a Lucky store located at 400 Las Gallinas Avenue, San Rafael, California.

10. On or about October 12, 1970, respondents, by their agents and pickets, by picketing and by other means, induced and encouraged delivery drivers employed by Safeway not to perform services at the Safeway store located at 700 B Street, San Rafael, California.

11. Also on or about October 12, 1970, and continuing through October 16, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged Safeway drivers not to perform services at its 700 B Street, San Rafael store. As a result, deliveries were not made.

12. Also on or about October 12, 1970, respondents, by their agents and pickets, by means of picketing and by other means, induced and encouraged drivers not to make deliveries at United Market located at 515 Third Street, San Rafael, California. As a result, deliveries to that store were not made.

13. Also on or about October 12, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged drivers of Mayfair not to perform services for their employer.

14. On or about October 13, 1970, respondents picketed three corners of the Highway 101 off-ramp to San Rafael, California, at Mission and Heatherton Streets, carrying signs the legend on some of which read: "Unfair to Teamsters—Scabs Must Go." By such picketing, and other conduct, respondents obstructed traffic entering San Rafael while inducing and encouraging truck drivers not to perform services for, make deliveries to, or pickups from retail stores located in San Rafael.

15. Also on or about October 13, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged drivers of Safeway not to perform services at Safeway's 900 Sir Francis Drake Boulevard, San Anselmo, California store. As a result of such activities, deliveries were not made.

16. On or about October 14, 1970, respondents, by their agents and pickets, picketed the Highway 101 off-ramp at Second and Irwin Streets, San Rafael,

California. That same day respondents, by their agents and pickets, picketed two corners of the Highway 101 off-ramp to San Rafael at Mission and Heatherton Streets.

17. On or about October 14, 1970, respondents, by their agents and pickets, picketed the Safeway store located at 700 B Street, San Rafael, California.

18. Also on or about October 14, 1970, respondents, by their agents and pickets, picketed the delivery areas to the United Super Market located at 100 Red Hill Avenue, San Anselmo, California, and such pickets and agents induced and encouraged drivers not to make deliveries at that store. As a result of respondents' activities, deliveries were not made.

19. Also on or about October 14, 1970, respondents, by their agents and pickets, picketed the street corners adjacent to and the delivery area of the United Market located at 515 Third Street, San Rafael, California. Respondents' said agents and pickets, by threats and picketing, induced and encouraged drivers not to make deliveries to that store. As a result of such activities, deliveries were not made.

20. Also on or about October 14, 1970, respondents, by their agents, induced and encouraged an employee of Ritz Foods not to perform services for his employer in San Rafael, San Anselmo and Fairfax, California.

21. Also on or about October 14, 1970, respondents, by their agents and pickets, by threats and picketing, induced and encouraged drivers of various employers engaged in commerce or in industries affecting commerce not to handle goods destined for Petrini's Meat, Inc. As a result of such activities, deliveries from various employers were not made. As a further consequence of such activities, Petrini's store received no deliveries of any kind after respondents' picketing began there on October 14, 1970.

22. On or about October 15, 1970, respondents, by their agents and pickets, picketed a Safeway truck near or adjacent to the Safeway store at 700 B Street, San Rafael, California. As a consequence of such picketing and other conduct, the Safeway driver refused to perform services for Safeway.

23. On or about October 16, 1970, respondents, by their pickets and agents, picketed the driveway and loading dock entrances to the Lucky store at 720 Center Street, Fairfax, California. The pickets carried signs some of which read: "This Seafarer Supports I. J. Strikers" and "Seamons Support I. J. Strikers."

24. Also on or about October 16, 1970, respondents, by their agents and pickets, picketed the customer entrances, delivery entrance and parking lot of the Safeway store located at 900 Sir Francis Drake Boulevard, San Anselmo, California. Some of the pickets carried signs with legends stating "Seamans Support I. J. Strike." Others carried signs stating "This Longshoreman Supports I. J. Strike."

25. Also on or about October 16, 1970, respondents, by their pickets and agents, picketed with from 12 to 15 pickets in the area of the Red Hill Shopping Center in San Anselmo, California, in the vicinity of a store of Safeway, of Longs Drugs (herein called Longs), and Sears, Roebuck & Co. (herein called Sears). Such picketing was engaged in with signs which identified the pickets as "Longshoremen" and "Seaman." Among such pickets was a person wearing a button identifying him as a steward for Respondent Local 10.

26. On various occasions since about October 8, 1970, respondents, and each of them, acting jointly and in concert and participation with each other, and in furtherance and support of Respondent Local 21's dispute with the Journal, have, by picketing, oral ap-

peals, instructions, directions and orders, and by other means, induced or encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to engage in work stoppages and refusals to perform services for their employers and have threatened, coerced and restrained such persons.

VI. The acts and conduct of respondents set forth in paragraph V and its subparagraphs 1 through 26 above have been engaged in by respondents acting as joint venturers and in concert and participation with each other.

VII. The acts ad conduct of respondents set forth in paragraph V and its subparagraphs 1 through 26 above, and in paragraph VI above, have been engaged in by respondent labor organizations and the individual respondents named herein acting as joint venturers and in concert and participation with each other.

VIII. By the acts and conduct described in paragraph V and its subparagraphs 1 through 26 above, and by other means, respondents have engaged in, and have induced and encouraged individuals employed by Arden-Mayfair, Incorporated (herein called Mayfair), Garden City Transportation Co., Ltd. (herein called Garden City), Lucky Stores, Inc. (herein called Lucky), Long's Drug Stores Incorporated (herein called Long's), Safeway Stores, Incorporated (herein called Safeway), Foremost Dairy Company (herein called Foremost), United Markets, Inc. (herein called United), Ritz Foods (herein called Ritz), Petrini's Meat, Inc. (herein called Petrini's), Olson Brothers, Incorporated (herein called Olson), Sears, Roebuck & Co. (herein called Sears), Greyhound Bus Lines (herein called Greyhound), Parisian Bakeries, Inc. (herein called Parisian), American Bakeries Co. (herein called American), Nielsen Freight Lines, Inc.

(herein called Nielsen), Rath Packing Company (herein called Rath), Kockos Brothers (herein called Kockos), Cala Foods, Inc. (herein called Cala), Baroni French Baking Co. (herein called Baroni), Kilpatrick's Bakeries, Inc. (herein called Kilpatrick's), Lincoln's Market (herein called Lincoln), Tuttle Cheese Co. (herein called Tuttle), Svenhard Bakeries (herein called Svenhard), Rawson Company (herein called Rawson), Armour and Company (herein called Armour), and The Coca-Cola Bottling Co. (herein called Coca-Cola), by their suppliers, by carriers making deliveries to or pickups from such persons, and by other persons engaged in commerce or in an industry affecting commerce, to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport or otherwise handle or work on goods, articles, materials or commodities, or to perform services, and have threatened, coerced or restrained such persons with an object or objects of:

(1) Forcing or requiring Mayfair, Garden City, Lucky, Long's, Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's, Lincoln, Tuttle, Svenhard, Rawson, Armour, Coca-Cola, and other persons to cease placing advertisements in or to otherwise cease doing business with each other or with The Journal.

(2) Forcing or requiring the customers and suppliers of such persons to cease doing business with such persons in order to compel such persons to cease placing advertisements in or otherwise cease doing business with The Journal.

IX. By their acts and conduct hereinabove set forth, respondents, and each of them, have failed and refused to comply with, and have violated and disobeyed,

the injunction Orders of this Court entered herein on February 13 and April 28, 1970.

CONCLUSIONS OF LAW

1. Respondents John DeMartini, Vice President, and Don Abrams, Organizer, were, and at all times material herein have been, representatives and agents of Respondent Local 21 within the meaning of the National Labor Relations Act, as amended (herein called the Act) and the Orders of this Court entered herein on February 13 and April 28, 1970.

2. Respondent Timothy J. Richardson, Business Manager and Recording Secretary, was, and at all times material herein has been, a representative and agent of Respondent Local 85 within the meaning of the Act, and the Orders of this Court entered herein on February 13 and April 28, 1970.

3. Respondent Local 70 is, and at all times material herein has been, a labor organization within the meaning of the Act and the Orders of this Court entered herein on February 13 and April 28, 1970.

4. Respondent James R. Muniz, President of Respondent Local 70, is, and at all times material herein has been, a representative and agent of Respondent Local 70 within the meaning of the Act.

5. Respondents have engaged in acts and conduct as set forth in the above Findings of Fact which affect the operations of Mayfair, Garden City, Lucky, Long's, Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's Lincoln, Tuttle, Svenhard, Rawson, Armour, Coca-Cola and other persons engaged in commerce within the meaning of Section 2, subsection (6) and (7) of the Act.

6. By their acts and conduct set forth in the above Findings of Fact, respondents, and each of them, have violated and disobeyed the Orders of this Court entered on February 13 and April 28, 1970, which acts and conduct constitute civil contempt of said Orders and of this Court.

DATED AT San Francisco, California, this 28th day of January, 1971.

W. T. SWEIGERT,
United States District Judge.

APPENDIX C

[caption omitted]

Civil No. C-70 895 WTS

Order and Adjudication in Criminal Contempt

December 24, 1970

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, herein called the Board, having duly petitioned this Court for an order adjudging San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Repsondent Local 70), its officers and agents, and James R. Muinz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business Manager and Recording Secretary, and International Longshoremen's and Warehousemen's Union Local No. 10, (herein called

Respondent Local 10), and its officers, and agents, in criminal contempt of this Court by reason of disobedience of and resistance to, and failure and refusal to comply with, the Temporary Injunction Orders of this Court entered herein in Civil No. C-70 306 LHB on February 13, 1970, and in Civil No. C-70 895 WTS on April 28, 1970; and this Court having, on October 19, 1970, ordered the said Respondents to appear before this Court and show cause why they should not be adjudged in criminal contempt of this Court; and the matter having come on for hearing before the Court initially on October 23, 1970, and on various dates thereafter; and Respondents having appeared personally and by counsel, and having been afforded full opportunity to offer evidence and to argue on the law and the facts; and it having been determined that this Court shall make Findings of Fact and Conclusions of Law as set forth below and enter such order as warranted by the evidence before the Court; now, therefore, upon all the pleadings and proceedings heretofore had herein, it is hereby found, concluded and adjudged as follows:

The Court finds that the allegations of the Petition filed herein on October 19, 1970, particularly the allegations of Paragraphs III and IV, all of which allegations are hereby incorporated by reference herein, have been proved beyond a reasonable doubt as to the respondents named below; and the facts of such allegations constitute the findings of fact in this case as to the respondents named below; and it is hereby,

ORDERED, ADJUDGED AND DECREED that Respondents Local 21, Local 70, Local 85, and individual Respondents Abrams, Muniz and Richardson are, and have been, and they hereby are adjudged to be, in criminal contempt of this Court by reason of

their wilful disobedience of and resistance to, and their wilful failure and refusal to comply with, the Temporary Injunction Orders of this Court entered herein on February 13, 1970, and on April 28, 1970; and it is further

ORDERED, ADJUDGED AND DECREED that said Respondents Local 21, Local 70, Local 85, Abrams, Muniz and Richardson, and each of them, shall appear in person before this Court on January 21, 1971, at four o'clock in the afternoon, Pacific Standard Time, at which time this Court shall render such judgment and impose such penalties as it deems just, proper and appropriate in the premises.

DATED AT San Francisco, California, this 24th day of December, 1970.

W. T. SWEIGERT,
United States District Judge.

APPENDIX D

[caption omitted]

Civil No. C-70 895 WTS

Findings of Fact and Conclusions of Law Re: Criminal Contempt Proceedings

January 21, 1971

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, herein called the Board, having duly petitioned this Court for an Order to Show Cause why respondents San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), its Organizer; Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 70), its officers and agents, and James R. Muniz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business Manager and Recording Secretary; and

International Longshoremen's and Warehousemen's Union, Local No. 10 (herein called Respondent Local 10), and its officers and agents; herein jointly and severally referred to as respondents, should not be adjudged in civil contempt of orders of this Court entered on February 13, 1970 and April 28, 1970, and for other civil relief, and the petitioner having further requested this Court to institute, *sua sponte*, criminal contempt proceedings against said respondents, and each of them, and an order of this Court having been executed on October 19, 1970, requiring said respondents to appear before this Court on October 23, 1970, and show cause, if any there be, why they, and each of them, should not be ajudged in civil contempt of this Court as prayed, and to answer the petition filed herein, and further requiring said respondents to personally appear before the Court and show cause, if any there be, why they, and each of them, should not be adjudged in, and punished for, criminal contempt; and said respondents having appeared personally and by counsel, and the aforesaid matters having come on to be heard by this Court commencing on October 23, 1970, and full opportunity having been afforded to all parties to offer testimony, evidence, exhibits, and arguments, and the Court having fully considered all the testimony, evidence, exhibits, and arguments offered, hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On February 13, 1970, this Court made and entered an order enjoining and restraining Respondent Local 21 and Respondent Local 85, their officers, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them, or any of them, from:

(a) Continuing to picket at or in the vicinity of Pier 46A at the Port of San Francisco; or picketing cargo or shipments of newsprint or other supplies awaiting delivery to California Newspapers, Inc., d/b/a San Rafael Independent Journal (herein called Journal), or picketing the piers or terminals where such cargo or shipments are located, or picketing the carriers of such cargo or shipments; or signaling or appealing to truckdrivers or other employees not to pick up, handle or work on such cargo or shipments at such piers or terminals, or otherwise to refuse to perform services for their respective employers at such piers or terminals; or

(b) ENGAGING IN, or by picketing, orders, directions, solicitation, requests or appeals, howsoever given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, or by employee discrimination, reprisals, disciplinary proceedings or threats thereof, INDUCING OR ENCOURAGING any individual employed by Star Terminal Co., Inc., Garden City Transportation Co., Ltd., Globe-Wally's Fork Lift Service, Inc. (herein called Star, Garden City and Globe), or by any motor carrier, lift truck service company or other person engaged in commerce or in an industry affecting commerce TO ENGAGE IN, a strike, slow-down or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service; or sanctioning, supporting or promoting any such strike or refusal; or

In any such or similar manner or by any other means, including refusal to dispatch employees pursuant to contractual obligation or custom, THREATENING, COERCING OR RESTRAINING said em-

ployers, or any other person engaged in commerce or in an industry affecting commerce,

Where in either case AN OBJECT THEREOF is: (1) to force or require Powell River-Alberni Sales Limited (herein called Powell), or any other person, to cease doing business with Journal; or (2) to force or require Star, Garden City, or any other person, to cease doing business with Powell, or to force or require Globe, or any other person, to cease doing business with Garden City, in order to compel Powell to cease doing business with Journal.

II. On April 28, 1970, this Court made and entered an order enjoining and restraining Respondent Local 21, its officers, representatives, agents, servants, employees, attorneys, and all members, persons and labor organizations acting in concert and participation with it, from:

(a) Continuing or resuming its picketing of the following named employers at or in the vicinity of the stores listed below where an object of the picketing is to cause customers of these stores to cease buying products not advertised in The Independent Journal newspaper:

The Emporium
835 Market Street
San Francisco, California
The Emporium
1000 Northgate Fashion Mall
San Rafael, California
Mayfair Market
7th and H Streets
San Rafael, California
Lucky
720 Center Street
Fairfax, California
Big G Super
100 Harbor Drive
Sausalito, California

Big G Super
5651 Paradise Drive
Corte Madera, California
Longs Drugs
880 Sir Francis Drake Boulevard
San Anselmo, California
Longs Drugs
442 Las Callinas Avenue
San Rafael, California

(b) Picketing at or in the vicinity of the premises of other firms which advertise in The Independent Journal newspaper where an object of the picketing is to cause customers of such firms to cease buying products not advertised in that paper;

(c) Appealing to the public, consumers and customers by means of handbills, oral statements, or otherwise, in conjunction with picketing, not to patronize the stores described in subparagraph (a) above, or any store owned by the firms named therein, or any other store advertising in The Independent Journal newspaper; or

(d) Threatening, coercing, or restraining The Emporium-Capwell Corporation, Arden-Mayfair Incorporated, Lucky Stores, Inc., Big G Super Markets, Inc., Longs Drug Stores Incorporated or any other firm advertising in The Independent Journal newspaper, by consumer picketing or by any like or related acts or conduct, where an object thereof is to force or require the said advertisers to cease advertising in The Independent Journal newspaper or to cease doing business with California Newspapers, Inc., d/b/a The Independent Journal.

III. The aforesaid injunction orders have been in full force and effect since their entry and respondents, and each of them, at all times material herein have had notice and knowledge of their terms.

IV. (a) At all times material herein, Respondent DeMartini and Abrams have been Vice President and Organizer, respectively, of Respondent Local 21, and its agents within the meaning of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.* (herein called the Act).

(b) At all times material herein, Respondent Local 70 has been a labor organization within the meaning of the Act.

(c) At all times material herein, Respondent Muniz has been President of Respondent Local 70 and its agent within the meaning of the Act.

(d) At all times material herein, Respondent Richardson has been the Business Manager and Recording Secretary of Respondent Local 85 and its agent within the meaning of the Act.

V. On or about, or prior to, October 7, 1970, respondents embarked upon a joint plan, program and campaign to create a boycott of goods, materials, commodities and services destined to, consigned to, or utilized by firms advertising in the Journal or to firms doing business with the Journal. In furtherance and support of their aforesaid joint plan, program and campaign:

1. On or about October 8, 1970, Respondent Abrams met with a group of approximately 15 men outside the Painters Union Hall on Mission and Tamalpais Streets in the City of San Rafael, California (hereafter referred to as San Rafael), during which meeting bumper stickers stating "Scabs Must Go" were distributed to members of the group. Thereafter, these men were dispatched by respondents to various street corners in San Rafael, where they engaged in stopping trucks of various carriers delivering merchandise and commodities to food markets and other firms in San Rafael advertising in the Journal, and, by oral

appeals, by picketing, by obstructing traffic, and by other means, induced and encouraged individuals employed by various carriers and food markets to refuse to make deliveries to firms advertising in the Journal, including Mayfair Market (herein called Mayfair). Among the individuals engaging in some of the aforesaid conduct was Respondent Richardson.

2. Also on or about October 8, 1970, respondents, including Respondent Richardson, picketed the delivery area of Safeway, Inc. (herein called Safeway), located at 700 B Street in San Rafael, and induced and encouraged a driver of Safeway not to make a delivery.

3. Also on or about October 8, 1970, respondents, by their agents, including Respondent Richardson and Respondent Muniz, harassed the driver of a truck of Garden City Transportation Co. Ltd. (herein called Garden City) on its return trip to Garden City's premises after making delivery of newsprint to the Journal, and picketed the premises of Garden City and its truck with signs, the legend on some of which read: "Teamsters on Strike—Scabs Must Go." As a consequence of such picketing, drivers of Garden City engaged in work stoppages and refusals to perform services for their employer. In addition, respondents threatened Garden City with the shutdown of its operations on October 9, 1970.

4. Also on or about October 9, 1970, respondents, including Respondent Richardson, picketed a store of Lucky Stores, Inc. (herein called Lucky) at 400 Las Gallinas Avenue, San Rafael, as a consequence of which drivers employed by various carriers were prevented from making deliveries to the said store. By such conduct, and by other means, respondents induced, encouraged and appealed to drivers employed by carriers and suppliers not to make deliveries.

5. Also on or about October 9, 1970, respondents picketed a Lucky store at 720 Center Street, Fairfax, California, as a consequence of which drivers employed by various carriers and suppliers refused to make deliveries to such store. By such conduct, and by other means, respondents induced and encouraged drivers of various carriers and suppliers not to make deliveries to such store.

6. Also on or about October 9, 1970, respondents picketed the premises of Foremost Dairy Company (herein called Foremost) in San Rafael and a store of Mayfair at 340 Third Street, San Rafael, and induced and encouraged drivers not to make pickups or deliveries.

7. Also on or about October 9, 1970, respondents picketed the entrance to the Red Hill Shopping Center, Sir Francis Drake Boulevard, San Anselmo, California, with signs some of which read: "Teamsters Support Independent Journal" and "Teamsters On Strike." Respondents, by such picketing and by other means, caused trucks delivering goods to the Safeway store located at 900 Sir Francis Drake Boulevard, San Anselmo, California, to turn away. Respondents also stopped trucks on Sir Francis Drake Boulevard, and induced and encouraged delivery drivers not to make deliveries to various Marin County retail stores.

8. On or about October 12, 1970, respondents, by their pickets and agents, by picketing and by other means, induced and encouraged drivers of Lucky not to perform services at the Lucky store located at 720 Center Street, Fairfax, California, and as a consequence prevented regular drivers from performing their duties for Lucky.

9. On or about October 12, 1970, respondents, by their agents, induced and encouraged delivery drivers not to perform services at a Lucky store located at 400 Las Gallinas Avenue, San Rafael, California.

10. On or about October 12, 1970, respondents, by their agents and pickets, by picketing and by other means, induced and encouraged delivery drivers employed by Safeway not to perform services at the Safeway store located at 700 B Street, San Rafael, California.

11. Also on or about October 12, 1970, and continuing through October 16, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged Safeway drivers not to perform services at its 700 B Street, San Rafael store. As a result, deliveries were not made.

12. Also on or about October 12, 1970, respondents, by their agents and pickets, by means of picketing and by other means, induced and encouraged drivers not to make deliveries at United Market located at 515 Third Street, San Rafael, California. As a result, deliveries to that store were not made.

13. Also on or about October 12, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged drivers of Mayfair not to perform services for their employer.

14. On or about October 13, 1970, respondents picketed three corners of the Highway 101 off-ramp to San Rafael, California, at Mission and Heatherton Streets, carrying signs the legend on some of which read: "Unfair To Teamsters—Scabs Must Go." By such picketing, and other conduct, respondents obstructed traffic entering San Rafael while inducing and encouraging truck drivers not to perform services for, make deliveries to, or pickups from retail stores located in San Rafael.

15. Also on or about October 13, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged drivers of Safeway not to perform services at Safeway's

900 Sir Francis Drake Boulevard, San Anselmo, California store. As a result of such activities, deliveries were not made.

16. On or about October 14 1970, respondents, by their agents and pickets, picketed the Highway 101 off-ramp at Second and Irwin Streets, San Rafael, California. That same day Respondents, by their agents and pickets, picketed two corners of the Highway 101 off-ramp to San Rafael at Mission and Heatherton Streets.

17. On or about October 14, 1970, respondents, by their agents and pickets, picketed the Safeway store located at 700 B Street, San Rafael, California.

18. Also on or about October 14, 1970, respondents, by their agents and pickets, picketed the delivery areas to the United Super Market located at 100 Red Hill Avenue, San Anselmo, California, and such pickets and agents induced and encouraged drivers not to make deliveries at that store. As a result of respondents' activities, deliveries were not made.

19. Also on or about October 14, 1970, Respondents, by their agents and pickets, picketed the street corners adjacent to and the delivery area of the United Market located at 515 Third Street, San Rafael, California. Respondents' said agents and pickets, by threats and picketing, induced and encouraged drivers not to make deliveries to that store. As a result of such activities, deliveries were not made.

20. Also on or about October 14, 1970, respondents, by their agents, induced and encouraged an employee of Ritz Foods not to perform services for his employer in San Rafael, San Anselmo and Fairfax, California.

21. Also on or about October 14, 1970, respondents, by their agents and pickets, by threats and picketing, induced and encouraged drivers of various employers

engaged in commerce or in industries affecting commerce not to handle goods destined for Petrini's Meat, Inc. As a result of such activities, deliveries from various employers were not made. As a further consequence of such activities, Petrini's store received no deliveries of any kind after respondents' picketing began there on October 14, 1970.

22. On or about October 15, 1970, respondents, by their agents and pickets, picketed a Safeway truck near or adjacent to the Safeway store at 700 B Street, San Rafael, California. As a consequence of such picketing and other conduct, the Safeway driver refused to perform services for Safeway.

23. On or about October 16, 1970, respondents, by their pickets and agents, picketed the driveway and loading dock entrances to the Lucky store at 720 Center Street, Fairfax, California. The pickets carried signs some of which read: "This Seafarer Supports I. J. Strikers" and "Seamans Support I. J. Strikers."

24. Also on or about October 16, 1970, respondents, by their agents and pickets, picketed the customer entrances, delivery entrance and parking lot of the Safeway store located at 900 Sir Francis Drake Boulevard, San Anselmo, California. Some of the pickets carried signs with legends stating "Seamans Support I. J. Strike." Others carried signs stating "This Longshoreman Supports I. J. Strike."

25. Also on or about October 16, 1970, respondents, by their pickets and agents, picketed with from 12 to 15 pickets in the area of the Red Hill Shopping Center in San Anselmo, California, in the vicinity of a store of Safeway, of Longs Drugs (herein called Longs), and Sears Roebuck & Co. (herein called Sears). Such picketing was engaged in with signs which identified the pickets as "Longshoremen" and "Seamen." Among

such pickets was a person wearing a button identifying him as a steward for Respondent Local 10.

26. On various occasions since about October 8, 1970, respondents, and each of them, acting jointly and in concert and participation with each other, and in furtherance and support of Respondent Local 21's dispute with the Journal, have, by picketing, oral appeals, instructions, directions and orders, and by other means, induced or encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to engage in work stoppages and refusals to perform services for their employers and have threatened, coerced and restrained such persons.

VI. The acts and conduct of respondents set forth in paragraph V and its subparagraphs 1 through 26 above, have been engaged in by respondents acting as joint venturers and in concert and participation with each other.

VII. The acts and conduct of respondents set forth in paragraph V and its subparagraphs 1 through 26 above, and in paragraph VI above, have been engaged in by respondent labor organizations and the individual respondents named herein acting as joint venturers and in concert and participation with each other.

VIII. By the acts and conduct described in paragraph V and its subparagraphs 1 through 26 above, and by other means, respondents have engaged in, and have induced or encouraged individuals employed by Arden-Mayfair, Incorporated (herein called Mayfair), Garden City Transportation Co., Ltd. (herein called Garden City), Lucky Stores, Inc. (herein called Lucky), Long's Drug Stores Incorporated (herein called Long's), Safeway Stores, Incorporated (herein called Safeway), Foremost Dairy Company (herein called Foremost), United Markets, Inc.

(herein called United), Ritz Foods (herein called Ritz), Petrini's Meat, Inc. (herein called Petrini's), Olson Brothers, Incorporated (herein called Olson), Sears, Roebuck & Co. (herein called Sears), Greyhound Bus Lines (herein called Greyhound), Parisian Bakeries, Inc. (herein called Parisian), American Bakeries Co. (herein called American), Nielsen Freight Lines, Inc. (herein called Nielsen), Rath Packing Company (herein called Rath), Kockos Brothers (herein called Kockos), Cala Foods, Inc. (herein called Cala), Baroni French Baking Co. (herein called Baroni), Kilpatrick's Bakeries, Inc. (herein called Kilpatrick's), Lincoln's Market (herein called Lincoln), Tuttle Cheese Co. (herein called Tuttle), Svenhard Bakeries (herein called Svenhard), Rawson Company (herein called Rawson), Armour and Company (herein called Armour), and the Coca-Cola Bottling Co. (herein called Coca-Cola), by their suppliers, by carriers making deliveries to or pickups from such persons, and by other persons engaged in commerce or in an industry affecting commerce, to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport or otherwise handle or work on goods, articles, materials or commodities, or to perform services, and have threatened, coerced or restrained such persons with an object or objects of:

(1) forcing or requiring Mayfair, Garden City, Lucky, Long's, Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's Lincoln, Tuttle, Svenhard, Rawson, Armour, Coco-Cola, and other persons to cease placing advertisements in or to otherwise cease doing business with each other or with the Journal.

(2) forcing or requiring the customers and suppliers of such persons to cease doing business with such persons in order to compel such persons to cease placing advertisements in or otherwise cease doing business with the Journal.

IX. (Deleted.)

X. By their acts and conduct hereinabove set forth, Respondent Local 21, Respondent Local 70, Respondent Local 85, Respondent Abrams, Respondent Muniz and Respondent Richardson, and each of them, have knowingly and wilfully, and with intent to defy, disobeyed and violated the Orders of this Court entered herein on February 13 and April 28, 1970.

CONCLUSIONS OF LAW

1. Respondents John DeMartini, Vice President, and Don Abrams, Organizer, were, and at all times material herein have been, representatives and agents of Respondent Local 21 within the meaning of the National Labor Relations Act, as amended (herein called the Act) and the Orders of this Court entered herein on February 13 and April 28, 1970.

2. Respondent Timothy J. Richardson, Business Manager and Recording Secretary, was, and at all times material herein has been, a representative and agent of Respondent Local 85 within the meaning of the Act and the Orders of this Court entered herein on February 13 and April 28, 1970.

3. Respondent Local 70 is, and at all times material herein has been, a labor organization within the meaning of the Act and the Orders of this Court entered herein on February 13 and April 28, 1970.

4. Respondent James R. Muniz, President of Respondent Local 70, is, and at all times material herein has been, a representative and agent of Respondent Local 70 within the meaning of the Act.

5. Respondents have engaged in acts and conduct as set forth in the above Findings of Fact which affect the operations of Mayfair, Garden City, Lucky, Long's Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's, Lincoln, Tuttle, Sevenhard, Rawson, Armour, Coca-Cola, and other persons engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

6. (Deleted.)

7. By their acts and conduct set forth in the above Findings of Fact, Respondent Local 21, Respondent Local 70, Respondent Local 85, Respondent Abrams, Respondent Muniz, and Respondent Richardson, and each of them, have knowingly and wilfully, and with intent to defy, disobeyed, violated, resisted and disregarded the Orders of this Court entered on February 13 and April 28, 1970, which acts and conduct constitute criminal contempt of said Orders and of this Court.

DATED AT San Francisco, California, this 21st day of January, 1971.

W. T. SWEIGERT,
United States District Judge.

APPENDIX E

Judgment Imposing Fines and Penalties in Re: Criminal Contempt

* * * * *

[2727] The COURT: Anything further from anyone that would like to be heard?

All right, I think, then at this time, the Court will proceed to judgment.

Have I got the prior order?

I might say in this matter, before pronouncing judgment, that I agree and I think all counsel should agree that the issue here is not the strike of Typographical Union No. 21 against the Independent-Journal. No question has been raised here about the legality of that strike or the right of the union involved or any other unions that wish to support it to picket in support of that strike. The issue presented to this Court was something entirely different. It was an issue as to whether on not these three unions, Typographical Union 21, Teamsters Union No. 85 and Teamsters Union No. 70 had, in concert or otherwise, turned what was a perfectly legitimate strike against the Independent-Journal into an attempt to expand it into a secondary strike involving virtually all of Marin County insofar as the deliveries by neutral trucks to neutral stores, retail outlets was concerned. There was some evidence in the record of violence, not great, but there—was evidence in the record of [2728] threats of violence by people connected with those unions, not only against what we might call laymen, but even against their own truck men from other labor unions.

And I am perfectly satisfied that this activity continued for somewhere within a month, so far as the evidence shows in this case, and I am also quite satisfied that all of these unions had notice and knowledge of the two court orders in question; Typographical Union 21 and Typographical Union 85, by direct service, which is not substantially in dispute, and Teamsters Local No. 70, not by direct service of notice, but otherwise by circumstantial evidence, in this case which leads the Court to believe that it would be ridiculous to hold that Mr. Muniz, who was president of Local 70 and over there on the ground taking an active part in it in connection with people from the other labor unions, didn't know about this order affecting one of his kindred teamster unions, so there is no doubt at all in the Court's mind about the violation of the Court order and about the fact that it was a violation that was made with knowledge.

On the other hand, I recognize that perhaps there were some provocations involved here, the long duration and stubborn resistance of the employer to the strike at Local 21 and also there was some, perhaps over-zealous reaction here by members, some members of these unions.

However, the unions that have been found guilty, all [2729] had people of—in their high echelons over there on the ground; Mr. Muniz for Local 70, Mr. Richardson for, I think it was—that's 85; isn't it? And the other gentleman for—for Local 21. I am trying to remember his name. Oh, yes. Mr. Abrams, and other people connected with these unions were on the ground and their activities were not limited to furthering the normal legitimate strike activities of Local 21 against the employer, Independent-Journal. Rather, their activities, according to the evidence, is clearly connected with an attempt to spread this iso-

lated strike into an expanded strike throughout the county, an attempt which, in its effects, reached somewhat serious proportion.

I said before, I am satisfied, from the evidence, that there was knowledge of the Court's order and it is essential to the system under which we live, system of law and order, mitigated by considerations of justice that Court's orders must be obeyed. They may be wrong, but until they are set aside or until they are appealed from, or otherwise stayed, they must be obeyed. And this is particularly true in the case of corporations.

Now, a union is, in one sense, a corporation. It is not a business corporation such as sometimes appears before this Court and is subject to fine, but it is, nevertheless, a so-called non-profit corporation and it is recognized for many purposes as a legal personality and these, the unions, [2730] by reason of this recordation, assume certain responsibilities for compliance with the law. I do not want to overpaint what happened in this incident, nor do I wish to underestimate it. I, therefore, after very serious and careful consideration to the evidence in this case, and to the presentations that have been made here to the Court at this hearing, insofar as the criminal contempt of this Court is concerned, that as to Typographical Union No. 21, there should be a fine of $25,000 with the following qualification, however. That as to $10,000 of that fine, there will be a stay of execution for 15 days. As to the balance of $15,000, there will be a suspension of payment for a payment of one year and with the following conditions, that if the Court is satisfied at the end of the period of one year that Typographical Union No. 21 has not directly or indirectly violated again the orders of this Court in this respect, that the balance of that fine will be remitted.

Also, it is understood that this period of one year is subject to either shortening or extension and the Court observes the power of the Court to, and the Court reserves power to do so.

As to Typographical—as to Teamsters Union No. 21, the——

Mr. BEESON: Excuse me, Your Honor.

The COURT: As to Teamsters Union Local 85, the [2731] Court is of the view that that union also should be fined the sum of $25,000 with a similar understanding. Namely, that $10,000 thereof will be stayed until, as to payment, for 15 days, and as to the balance of $15,000, there will be a suspension of payment of that balance for a period of one year with the understanding that if the Court is satisfied at the end of one year there has been no further violation of its orders in question, that that balance will be remitted. The Court also reserving power to either shorten that period of one year or to extend it.

As to Teamsters Union Local 70, the Court is also of the view that that union should be fined the sum of $25,000 with a similar understanding that $10,000 thereof be stayed for a period of 15 days and that the balance of $15,000 shall be suspended for a period of one year with the understanding that if Local 70, by the finding of the Court subsequently has not violated this, these orders of Court, that that balance will be remitted as to that union.

The Court similarly reserving the power to either extend or to shorten that.

A formal order will be prepared reflecting these views, and indicating that what the Court says about future violations of the order means that these unions will not directly or indirectly, either alone or in conjunction with others, further violate the terms of the injunctions in [2732] question.

So far as the unions are concerned, and so—I believe that that, that this, these fines and this penalty will be not too heavy nor too light. In view of the nature of the situation that we face to vindicate the principle that unions just as well as other corporations, all of these corporations, assuming responsibility to the public and having unique powers and influence, themselves, must obey the orders of the Court.

We will now proceed to the individual defendants. I would like to have Mr. Muniz, Mr. Richardson and Mr. Abrams step forward.

This is Mr. Richardson?

Mr. RICHARDSON: Yes.

The COURT: This is Mr. Muniz?

Mr. ABRAMS: Abrams.

The COURT: This is Mr. Muniz?

As to the three defendants, the Court has found each of you guilty of violation of the orders of the Court and human mind is frail and I may be wrong, but that's my finding from the evidence in this case, and I believe that with respect to the individuals, there is no need for this Court to vindicate its integrity here by fining these individuals. This is an institution matter. I am not going to fine these individuals and furthermore, I don't think that the situation [2733] here calls for any drastic action with respect to these individuals who, as I say, are instrumentalities in the movement, in the institution of design here. I, therefore, am going to suspend imposition of penalty in this case so far as these three men are concerned; two of them being president of their union and one of them being secretary.

Mr. BEESON: Your Honor, Mr. Abrams is an organizer.

The COURT: Mr. Abrams being an organizer. I beg your pardon.

Mr. Muniz being——

Mr. MUNIZ: President.

The COURT: Mr. Richardson being the——

Mr. RICHARDSON: Recording secretary.

The COURT: I am going to suspend any penalty with respect to these individuals and place them on probation for one year subject to the Court's right to shorten or to extend that period with the understanding, however, that if—that the condition of probation is that these men do nothing to further any additional violations of the order in question, of the purported orders in question, with the understanding that if they break what is, I believe, a very fair condition of their probation, that they subject themselves to the power of this Court to impose a sentence of imprisonment of up to, but not exceeding, six months. And I believe that unless these gentlemen, as individuals, have anything to say [2734] to me, that that's the way the matter will stand.

I think, however, it's been made clear that any statements that you three gentlemen would like to offer have already been made by your counsel.

Do you understand that, Mr. Richardson?

Mr. RICHARDSON: Yes, sir.

The COURT: And you, Mr. Abrams?

Mr. ABRAMS: Yes, Your Honor.

The COURT: And you, Mr. Muniz?

Mr. MUNIZ: Yes, Your Honor.

The COURT: All right, thank you very much, gentlemen.

Mr. POOLE: Your Honor, may I be heard at this moment?

The COURT: Yes.

Mr. POOLE: Your Honor is mindful of the position expressed by counsel and the authorities presented earlier in this hearing concerning the power of the

Court to impose certain sentences in the light of decisions of the United States Supreme Court in cases ranging from United States versus Barnett——

The COURT: What is the point of your remarks?

Mr. POOLE: The point of my remarks, Your Honor, is I ask Your Honor to reconsider the fine which Your Honor has now imposed upon the two unions, Locals 85 and 21 because those fines exceed the allowable pecuniary fine set forth in Title 18 of the United States Code, Section 1, relating to [2735] petty offense. I made these—this position clear to Your Honor during the proceedings.

The COURT: I have considered that and I have made my interpretation and I—it's no need to reconsider what I have already considered. The fines that I have levied will stand. You have your remedy by appeal.

Mr. POOLE: I understand.

The COURT: I may well be wrong.

Mr. POOLE: Well, I know Your Honor doesn't desire argument. I don't intend to. I think the record should show, Your Honor—let me just make this brief statement for the record that in view of the Court's denial of the jury trial requested on behalf of Locals 85 and 21, it is our position, and we therefore move the Court to remit so much of the sentence that exceeds that entitled petty offense, based upon the authority of the Supreme Court decisions in Bloom versus Illinois, *Sheaf* versus *Schnsckenberg,* United States versus Barnett, cases which we have already cited to Your Honor previously.

The COURT: Yes, I am satisfied personally that the Court is not limited to that minimum fine of $500 insofar as the defendant unions are concerned.

If I am wrong, I will gladly—be glad to acknowledge it if the upper court so rules.

Mr. POOLE: Your Honor understands we are not [2736] challenging the power of the Court in a contempt case to impose a substantial fine. We are talking about the power of the Court as limited by its denial for a demand for a jury trial. That's what our position is.

The COURT: I understand your position perfectly.

Mr. POOLE: Thank you.

The COURT: And the record will show that I denied your request.

Mr. POOLE: Thank you.

Mr. VAN BOURG: Your Honor, on behalf of Local 70, we, of course, join in the request and the motion and request a ruling on the record.

The COURT: The motion is denied.

APPENDIX F

[caption omitted]

Order Re: Reimbursement of Costs and Expenses

April 19, 1971

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, herein called the Board, having petitioned this Court for an Order to Show Cause why respondents San Francisco Typographical Union No. 21, International Typographical Union, AFL–CIO (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 70), its officers and agents, and James R. Muniz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business Manager and Recording Secretary; and International Longshoremen's and Warehousemen's Union, Local No. 10 (herein called Respondent Local 10), and its officers and agents; herein jointly and severally referred to as

respondents, should not be adjudged in civil contempt of orders of this Court entered on February 13, 1970 and April 28, 1970, and for other civil relief, and the petitioner having further requested this Court to institute, *sua sponte,* criminal contempt proceedings against said respondents, and each of them, and an order of this Court having been executed on October 19, 1970 requiring said respondents to appear before this Court on October 23, 1970, and show cause, if any there be, why they, and each of them, should not be adjudged in civil contempt of this Court as prayed, and to answer the petition filed herein, and further requiring said respondents to personally appear before the Court and show cause, if any there be, why they, and each of them, should not be adjudged in, and punished for, criminal contempt; and said respondents having appeared personally and by council, and the aforesaid matters having come on to be heard by this Court commencing on October 23, 1970, and during the course of these proceedings, petitioner having amended his petition to delete the name of Henry Montano as a respondent; and full opportunity having been afforded to all parties to offer testimony, evidence, exhibits, and arguments, and the Court, after consideration of all the testimony, evidence, exhibits, and arguments offered, having on December 24, 1970, issued its Order and Adjudication in Criminal Contempt as to Respondent Local 21, Respondent Local 85, Respondent Local 70, Respondent Abrams, Respondent Richardson and Respondent Muniz, and on the same date having issued its Order and Adjudication in Civil Contempt as to all the respondents; and on January 21, 1971, this Court having made and entered Findings of Fact and Conclusions of Law Re: Criminal Contempt Proceedings supplementary to and *in extenso* of the December 24, 1970 Order and Adjudication in

Criminal Contempt; and on January 22, 1971, this Court, having afforded all the respondents additional opportunity to offer evidence, testimony, exhibits and argument on the civil contempt proceedings, and Respondent Local 10 having requested an opportunity to present additional evidence, this Court having set aside the December 24, 1970 Order and Adjudication in Civil Contempt as to Respondent Local 10 for such purpose, and having received and considered the additional evidence offered by Respondent Local 10; and upon consideration of such additional evidence, and the entire record in this case, the Court having reaffirmed its Order and Adjudication in Civil Contempt of December 24, 1970 as to all the respondents, and supplementary to and in *exteno* of such order, having on January 28, 1971 made and entered its Findings of Fact and Conclusions of Law Re: Civil Contempt Proceedings; and, pursuant to this Court's Order and Adjudication in Civil Contempt of December 24, 1970, petitioner having on February 11, 1971 filed his Statement of Costs and Expenses and having requested an order directing respondents to reimburse the Board for such costs and expenses; and on January 26, 1971, January 28, 1971, and February 11, 1971, the Charging Party in the proceedings before the Board, California Newspapers, Inc., d/b/a Independent Journal (herein called the Charging Party), Lucky Stores, Inc., Arden-Mayfair, Inc., Purity Stores, Inc., Cala Foods, Inc., and United Markets, Inc. (herein collectively called Food Employers) and the City of San Rafael, having filed with the Court petitions for the imposition of compensatory fines, and the matter of the reimbursement of the Board for costs and expenses and the imposition of the aforesaid fines having come on for hearing on February 19, 1971, and March 26, 1971, and all parties having been afforded full op-

portunity to present evidence and to argue on the matters, and the Court being duly advised in the premises, it is hereby

ORDERED, ADJUDGED AND DECREED that petitioner's request for reimbursement, as amended on the record at the hearing on March 26, 1971, be, and it hereby is, allowed, but only in the sum of $21,208.15, that said sum reflecting the deduction from the total claimed by petitioner of $167.11, representing the cost of automobile tires of a deputy United States marshal allegedly slashed in the course of making service of process; it is hereby further

ORDERED, ADJUDGED AND DECREED that the said sum of $21,208.15 shall constitute a judgment against Respondent Local 21, Respondent Local 70, Respondent Local 85, and Respondent Local 10, and against each of them, and that the said respondent, jointly and severally and equally and entirely, shall be, and are, obligated to discharge the same; it is further

ADJUDGED AND DECREED that the costs and expenses hereinabove awarded to petitioners, or incurred in the course of the investigation, preparation, presentation and prosecution of the criminal as well as the civil contempt proceedings herein involved, equally and entirely, and by virtue of the record in the criminal contempt proceedings, by agreement of the parties and by order of the Court, having been made a part of the record in the civil contempt proceedings, are chargeable entirely to the civil proceedings; it is further

ORDERED, ADJUDGED AND DECREED that respondents pay to petitioner within 30 days from the date of this order the amount hereinabove awarded and that, in the event such payment is not made, attachment issue against Respondent Local 21, Respond-

ent Local 70, Respondent Local 85 and Respondent Local 10; it is further

ORDERED, ADJUDGED AND DECREED that the petitions of the Charging Party, of the City of San Rafael, and of the Food Employers be, and they hereby are, denied, without prejudice to the rights of the said parties to institute appropriate proceedings under the provisions of 29 U.S.C. Section 187, or any other provision of law; it is further

ORDERED, ADJUDGED AND DECREED that respondents herein, and each of them, shall fully comply with all the terms and provisions of subparagraphs (b) and (c) of the Order and Adjudication in Civil Contempt of this Court of December 24, 1970, and that respondents, and each of them, shall file with the Clerk of this Court and serve copies thereof on petitioner within 15 days from the date of this order, a sworn statement showing in detail the steps taken by respondents to comply with this Court's said order; it is further

ADJUDGED AND DECREED that this Court shall, and it hereby does, reserve the power to require payment by respondents of any further costs and expenses which may hereafter be incurred by petitioner in connection with these or any appellate court proceedings.

DATED AT San Francisco, California, this 19th day of April, 1971.

W. T. SWEIGERT,
United States District Judge.

APPENDIX G

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are as follows:

> SEC. 8. (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> * * * * *
>
> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—
>
> * * * * *
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person * * *. *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;
>
> * * * * *
>
> *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in

such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

* * * * *

SEC. 10. (h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101–115).

* * * * *

(*l*) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of pargraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a

complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: * * * Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. * * *

Section 11 of the Norris-LaGuardia Act, 47 Stat. 72, repealed by 62 Stat. 862, provided:

> In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

U.S. GOVERNMENT PRINTING OFFICE: 1974

SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
OCT 24 1974
MICHAEL RODAK, JR., CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1974

No. 73-1813

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL NO. 10,
Petitioner,

VS.

ROY O. HOFFMAN, Director, Region 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONER INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL NO. 10

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In the Supreme Court
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REPLY BRIEF FOR PETITIONER INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL NO. 10

The Memorandum for the Respondent appears, in the main, to be an attempt to limit the scope of the writ of certiorari to questions relating to the right to a jury trial in the criminal contempt proceedings

(Memo, p. 25).[1] While those questions are important and should, of course, be reviewed here, nothing in the Memorandum supports the suggestion that this Court should refuse to review the equally important questions presented in the civil contempt proceeding. As this very case illustrates, a labor union may be as severely punished in a civil, as in a criminal, contempt action. Respondent's concession that an inter-circuit conflict in the criminal aspect of the case requires resolution, does not justify ignoring that the civil aspect of the case presents equally important inter-circuit conflicts as well as an egregious deviation from well-established principles in the law of civil contempt. This is particularly true where, as here, one of the petitioners was acquitted of the criminal contempt yet was heavily fined in the civil case.

I

In the face of the virtually unanimous authority in the circuits that civil contempt is required to be proved not by a mere preponderance of the evidence but by evidence which is both clear and convincing

[1]We refer here and throughout to the "Memorandum for the Respondent" dated October 1974 and signed by the Solicitor-General as well as by counsel for the National Labor Relations Board. An earlier document, dated August 26, 1974 and entitled "Brief for Respondent, California Newspapers, Inc., d/b/a San Rafael Independent Journal, in Opposition", has also been filed. We do not believe that California Newspapers, Inc. is a party to the instant proceeding within the meaning of this Court's Rule 21(6) since it was not a party to the proceeding in either of the Courts below. In any case there is nothing in its Brief in Opposition which we believe requires comment from us at this time and we shall address ourselves solely to the Memorandum submitted by the Solicitor-General and counsel for the National Labor Relations Board.

(Pet., 73-1813, pp. 13-17),[2] respondent does not suggest that Local 10's legal position is unsound. Nor does respondent dispute that the standard which the district court explicitly stated it was applying was indeed an improper standard for it to have applied.

Under these circumstances, and in an apparent effort to avoid a forthright concession that the decision below is in flat conflict with the virtually unanimous views of the other circuits on this question, respondent falls into the error, condemned in *United States v. United Mine Workers of America*, 330 US 258, 299 (1947), of "mingling . . . the civil and criminal proceedings." He argues that since the evidence used to establish criminal liability was also later used to establish civil liability, Local 10 has no cause for complaint: "it follows that the civil contempt was likewise established by that same high standard" (Memo, p. 16).

However one may view this argument in the cases of those actually found guilty of the criminal contempt here, it simply has no application to Local 10. For, as to Local 10, the Court had found that the allegations of criminal contempt "have *not* been proved beyond a reasonable doubt" (R. 1218, 1219; Tr. 2638; italics supplied). Thus "*the* civil contempt" against Local 10 cannot be sustained by any reliance

[2]In the short time since the petition herein was filed, the Court of Appeals for the Sixth Circuit (*Local 98 v. NLRB*, 497 F2d 60, 64-65 [6 Cir. 1974]) and the District Court for the Southern District of New York (*Weinman v. Iron Workers, Local 40*, ——— F.Supp. ———, 87 LRRM 2131, 2132 [Aug. 2, 1974]), have once again reiterated that the standard is not a mere preponderance, but rather that the evidence must be "clear and convincing".

upon the criminal contempt findings against the others.

Furthermore, respondent's attempted explanation of the District Court's acquittal of Local 10 in the criminal case is contrary to what that Court itself made clear by its finding that the case against Local 10 had not been proved beyond a reasonable doubt and is based upon a misreading of the record. Respondent says that the District Court "emphasized" that Local 10 was acquitted "solely because the proof of [its] involvement in the contumacious conduct fell short of demonstrating the wilfulness required of criminal, as opposed to civil, contempt (Tr. 2639)." (Memo, p. 11). The argument is repeated, with the same transcript citation, almost word for word at page 15.

Now the transcript is in the clerk's office in San Francisco, not in the clerk's office in Washington. But, so that there can be no mistake about what appears in the transcript at page 2639, so far as it concerns Local 10, we quote it verbatim here:

> "With respect to International Longshoremen's and Warehousemen's Union, Local No. 10, my finding in respect to the acquittal of this union of criminal intent [sic] is based not so much on the fact that they did not have some knowledge of the order in question through service upon them of the temporary restraining order, but rather upon the fact that assuming they had some knowledge of the order, that their involvement here has not been sufficiently brought home to the union itself in such a manner as to convince me

> that whatever they did was done contemptuously. I do find, however, that the allegations of the petition have been proved by a preponderance of the evidence as to—for the purposes of civil contempt, not only as to Local 21 and Abrams and Local 85 and Richardson and Local 70 and Muniz, but also as to International Longshoremen's Union No. 10."

Immediately preceding this the Court had announced:

> "First, I find from the evidence in this case beyond a reasonable doubt that the allegations of the petition have been proved insofar as they pertain to Typographical Union No. 21 . . . Local 70 . . . and . . . Muniz.
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> "I find that the allegations of the petition have not been proved beyond a reasonable doubt as to International Longshoremen's and Warehousemen's Union Local No. 10 . . ." (Tr. 2638).

What the District Court did, therefore, was, first, to find that the criminal case against Local 10 had *not* been proven beyond a reasonable doubt. Then, it turned to the civil case and found that that case had been proved by a preponderance of the evidence. The legal standard it applied in the civil case was just plain wrong.[3]

The reason assigned by the Solicitor-General, speaking for the Labor Board, to justify the Court of Appeal's approval of this deviation from the near

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[3]After the petition herein was filed, the Court below, in another case, recognized the importance of using the proper standard: ". . . we refuse to say that the trial court's imposition . . . . of the wrong burden of proof was harmless" (*United States v. Cales*, 493 F2d 1215, 1216 (9 Cir. 1974)).

unanimous rule that civil contempts may not be sustained unless they have been proved by clear and convincing evidence, is really not worthy of his high office. It plainly does not warrant a refusal by this Court to review and redress the egregious error in the law of civil contempts manifested by the decision below.

II

Insofar as the response addresses the question of the lack of "actual notice" to Local 10, it is remarkable for its failure to cite, much less to consider, the rule underlying federal contempt practice or the most recent decisions of this Court applying that rule to civil contempt proceedings. Thus neither Fed. R. Civ. Pro. Rule 65[d] nor *Granny Goose Foods, Inc. v. Brotherhood of Teamsters,* 415 US 423 (1974) or *Allee v. Medrano,* ..... US ....., 40 L.Ed.2d 566 (1974) is so much as mentioned in the response. Those cases clearly establish—or, really, merely most recently reiterate—that "one basic principle built into Rule 65 is that those against whom an injunction is issued should receive fair and precisely drawn notice of what the injunction *actually* prohibits" (415 US at 444; italics supplied) and that injunctions issued with respect to incidents involved at one location may not be applied to incidents which later occur at other locations(..... US at ....., 40 L.Ed.2d at 577).[4]

[4]Nor does the response cite the earlier decision of this Court, *International Longshoremen's Association v. Philadelphia Marine Trade Association,* 389 US 67 (1967) to the same effect or the decisions of the Courts of Appeal for the Second, Third and Tenth Circuits, all of which conflict with the decision below on this point. *New York Telephone Company v. Communication*

In this connection, the response acknowledges, as it must, that the two decrees here involved deal with two entirely different subject matters and places: The February decree with the picketing of rolls of newsprint "at the Port of San Francisco" (Memo, p. 4), the April decree with picketing of advertisers in Marin County (p. 6). It also acknowledges, as it must, that the only order of which Local 10 had "actual knowledge" was the February order (p. 5) and that the picketing upon which the civil contempt adjudication against Local 10 was based was alleged to be a violation not of the February, but of the April, order (pp. 9-10, n. 5). Thus, on its face, there is, at the minimum, an apparent violation of Rule 65's command that the order shall bind only those who receive "actual notice" of its "specific terms".

Respondent seeks to foreclose review of this situation by arguing that the service of the February temporary restraining order, which admittedly expired by its own terms on the very day on which it was served (Memo, pp. 4-5), put Local 10 "on notice" that "it was *possible* that the injunction would be

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Workers of America, 445 F2d 39 (2 Cir. 1971); *United States v. Hall*, 198 F2d 726, 729 (2 Cir. 1952); *Ford v. Kammerer*, 450 F2d 279, 289 (3 Cir. 1971); *Yates v. United States*, 316 F2d 718, 723 (10 Cir. 1963).

The Circuit decision in the *Philadelphia Marine Trade Association* case (368 F2d 932, 934 (3 Cir. 1966), which was reversed by this Court, is cited in connection with one aspect of the jury trial argument in the criminal case (Memo, p. 18, n. 8). Nowhere, however, does respondent refer to this Court's holding, applicable to the civil case here, that an error resulting from the failure of a decree to comply with the mandate of Rule 65(d), that it "state in 'specific . . . terms' the acts that it . . . . prohibited" is not "'minor and in no way decisional'"; but, rather, is "both serious and decisive." (389 US at 76).

continued" (pp. 14-15; italics supplied). Such an argument is not tenable in the face of the foregoing "basic principle built into Rule 65"; but, even ignoring this, the only injunction which anyone could have expected to have been "continued" would have been the one dealing with picketing newsprint at the Port of San Francisco. Local 10 was not charged with having violated *that* injunction.

In an attempt to close this gap, respondent is forced to argue that Local 10 "was under an obligation to inquire whether any '*further* order of the Court' had been entered" (p. 15; italics supplied) before it engaged in otherwise lawful activities which the temporary restraining order had not prohibited. Not surprisingly, no authority is cited for this extraordinary proposition. Rule 65(d) and the cases applying it would seem to make it clear that it is the moving party who is required to establish that the alleged contemnor had actual knowledge of the specific terms of *the* order. Nothing in the rule or the cases would appear to impose on the alleged contemnor a duty or obligation to "inquire whether 'any further order' " had been made.

Considering the nature of a contempt proceeding—it is a "potent weapon" which can be (and in this case was) transformed into a "deadly one" (*International Longshoremen's Association v. Philadelphia Marine Trade Association, supra,* 389 US at 76)—the rule cannot reasonably be read otherwise. No more than one should "be left to guess" about an injunction's intended *duration* (*Granny Goose Foods, Inc. v. Broth-*

erhood of Teamsters, supra, 415 US at 444) should one be left to guess about its intended *scope.*

This Court should not permit such a relaxation of the safeguards deliberately built into Rule 65 as is revealed by the record in this case.

CONCLUSION

The Solicitor-General urges this Court to review this case to determine whether the District Court, with the approval of the Court of Appeals, improperly deprived certain petitioners of a jury trial on the criminal contempt charge. There simply is no reason for him to suggest that this Court, during the course of that review, should close its eyes to this petitioner's contentions that the adjudication of civil contempt ran counter to one of the basic principles built into Fed. R. Civ. Pro. Rule 65(d) and the cases applying that rule and was, in addition, predicated upon a view of the law concerning the requisite standard of proof in civil contempt cases which is contrary to the view of practically every other federal court in the nation.

Dated, San Francisco, California,
October 21, 1974.

Respectfully submitted,
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